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Strategic Assessment Team
Consumer Data Right Division
The Treasury

By email: data@treasury.gov.au

Strategic Assessment to inform an economy-wide Consumer Data Right – Consultation Paper

Thank you for the opportunity to contribute to the Strategic Assessment process underpinning an economy-wide rollout of the Consumer Data Right (CDR). Our submission focuses on implications of CDR implementation for:

- maximising social inclusion, which is protective of mental health
- minimising social exclusion and isolation, which are risk factors associated with poor mental health
- ensuring that Australians who face barriers to social inclusion (including through economic participation) are not locked out of successfully exercising their CDR, and
- safeguarding safety and privacy for Australians affected by family and domestic violence, including abuse of older Australians.

Recommendations

Recommendation 1

Ongoing rollout of the CDR across the economy should be accompanied by a surge of policy and programme effort to close the digital divide, so that CDR implementation does not exacerbate existing economic and social disadvantage and the CDR can be successfully exercised by a greater proportion of the population.

Recommendation 2

Resource the regulators (the ACCC, the OAIC and the DSB) to prioritise the CDR aspect of their roles to an extent that is proportionate to the potential for an economy-wide CDR to enable innovation and competition – for which consumer confidence in Accredited Data Recipients (ADRs) and associated accountability mechanisms are prerequisites.

Recommendation 3

Adopt co-design principles to inform implementation of the CDR, approaching consumers and peak organisations with lived experience of safety concerns (including family and domestic violence), elder abuse, institutional abuse and technology facilitated abuse.

Recommendation 4

Consult with the Attorney-General's Department as to synergies and challenges with potential rollout to Government (as suggested at p 14 of the Consultation Paper), and more broadly to datasets that may have personal safety implications.

The work of the Relationships Australia federation

A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins the work of Relationships Australia. We are committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing practice evidence and skills to research projects, the development of public policy, and the provision of compassionate and effective supports to individuals, families and communities.

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances. Relationships Australia has, for over 70 years, provided a range of social services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victim survivors and perpetrators of family violence, and relationship and professional education. We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Accordingly, this submission refers to evidence demonstrating:

- the adverse impacts of social isolation and loneliness, which include increased risk of becoming a victim or perpetrator of abuse, as well as pervasive negative effects on mental and physical health, and
- the protective qualities of social inclusion and connection.

The potential for interventions that strengthen connections and reduce isolation is one of the most promising avenues for reducing the risk of abuse and exploitation of people in cohorts facing systemic barriers to participation in society. For example,

> Social support has emerged as one of the strongest protective factors identified in elder abuse studies….Social support in response to social isolation and poor quality relationships has also been identified as a promising focus of intervention because, unlike some other risk factors (eg disability, cognitive impairment), there is greater potential to improve the negative effects of social isolation.[1]

We serve many cohorts who are disproportionately more likely to experience systemic and structural barriers to participating in society. Relationships Australia is concerned that without

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[1] See Dean, CFCA 51, 20, Box 7, citing the United States of America population study described in Acierno et al, (2017); citing also Hamby et al (2016); Pillemer et al (2016).

conscious attention to and support for how they can access their data, they will be left behind and barred from reaping the benefits that the CDR could provide. Conversely, the entities that hold their data will continue to leverage and monetise the benefits of the CDR, as will people who already possess significant financial and social capital. This is a recipe for:

- denial of an array of human rights relating to social, political, economic and cultural participation
- social exclusion and isolation leading to loneliness and its consequent adverse health impacts, as described below, and
- further entrenching divisions in society which, over the medium to long term, will challenge Australia's capacity to flourish.

Overarching position

Relationships Australia recognises the potential of the CDR to address power and information asymmetries between consumers and producers. We acknowledge that effective implementation of the CDR should enable Australians to leverage the data held about them and become more informed consumers, as well as to monetise their own data in ways that have not previously been possible. We welcome the policy intent that implementation of the CDR will be consumer-led and informed by a 'life course' perspective.

Why social inclusion is important and implications of CDR implementation for maximising it

Whether the CDR generates its expected benefits will depend on breadth and depth of take up by consumers. If insufficient numbers take up the CDR, or if it is taken up but ineffectively, then not only will consumers not reap the benefits, but neither will the forecast innovation and competition benefits flow to the economy more broadly. Currently, implementation of the CDR is heavily weighted towards those on the 'right side' of the digital divide – consumers who have access to safe, private, reliable and high speed internet services, and the digital literacy to confidently and securely engage with the online environment. It would seem, for example, that prerequisites to effective exercise of an individual's CDR would include:

- access to online devices
- access to reliable and high speed internet services (not a given even in urban areas of capital cities)
- ability to download apps
- awareness of, and trust in, comparison apps
- familiarity with online shopping, banking and payment
- access to online credit
- awareness of how to stay safe online (eg including awareness of current and evolving cybersafety threats), and
- understanding of how to effectively access complaints processes and other integrity measures.

Research indicates that digital inclusion is strongly affected by a range of demographic and other factors which erect barriers to social inclusion more broadly (see, eg, Park, 2017). Thus, digital exclusion and social exclusion (which can lead to loneliness) are associated. We suggest that, as our social, economic and cultural lives are increasingly moved online, digital exclusion will lead to increased isolation and loneliness, with their attendant morbidities.

Aetiology of loneliness

Loneliness is a complex social problem stemming from dissatisfaction with our relationships, a lack of positive and respectful relationships, or both of these. It is often caused by experiences of exclusion due to structural and systemic social realities that form obstacles to participation in social, economic, cultural and political life.

Adverse impacts of loneliness

Loneliness is a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019). It has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).[2]

Why Relationships Australia prioritises addressing loneliness and building inclusion

Relationships Australia has a particular interest in isolation and loneliness. We are invested in supporting respectful and sustainable relationships not only within families, but within and across communities. Relationships Australia is uniquely positioned to speak on isolation and loneliness as we have clinical experience supporting clients who experience loneliness, have conducted pioneering research into who experiences loneliness (eg Mance, 2018), and manage a social connection campaign, Neighbour Day,[3] which supports people to create connections which combat loneliness. In our clinical practice and our advocacy, we apply a social model of loneliness which recognises systemic and structural barriers that inhibit people from making fulfilling social connections and from participating as fully as they would wish in all facets of our community.

These barriers are experienced with particular acuteness by the following groups with whom Relationships Australia works daily:

- Aboriginal and Torres Strait Islander people
- people with disability
- people who come from culturally and linguistically diverse backgrounds
- people affected by complex grief and trauma, intersecting disadvantage and polyvictimisation
- people living with intergenerational trauma and survivors of all forms of abuse, including institutional abuse
- people experiencing mental ill-health
- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

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[2] The campaign *Ending Loneliness Together* has released a guide that explains how community organisations can use validated scales to measure loneliness: https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guide-to-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf

[3] Neighbour Day is Australia's annual celebration of community, encouraging people to connect with their neighbours. Neighbours matter (whether near, far, or online), and now, more than ever, is the time to make creative connections and to stay connected; see https://neighbourday.org/

Relationships Australia has welcomed the Government's prioritisation of improvements to mental health and suicide prevention services, and the substantial funding, announced in May 2021, for mental health and suicide prevention measures under the *National Mental Health and Suicide Prevention Plan*.[4] Mental health and suicide prevention are cross-cutting issues, and the prioritisation accorded them requires policy makers across all portfolios to take into account potential impacts on mental health. In this instance, we consider that to address loneliness, we must address the structural and social barriers which inhibit participation and connection - digital exclusion is one of these barriers.

The CDR and the risk of exacerbating isolation and loneliness

Relationships Australia acknowledges that the CDR is intended to maximise the participation of consumers in the digital economy and the bricks and mortar economy, and to level the data playing field between producers and consumers. These policy objectives are, we consider, inherently inclusive.

If not implemented with sufficient attention to minimising digital exclusion, however, CDR implementation will exacerbate structural and systemic obstacles. Those who have the resources to get online and access the CDR will, for example, achieve the forecast savings from better deals for goods and services. Those already affected by poverty, housing precarity, employment precarity, and other barriers (including those who experience digital exclusion) will fall further and further behind. Their digital exclusion will compound their social exclusion, and heighten their risk of experiencing loneliness, with its consequent morbidities.

This would undermine the broader policy objective of CDR to empower consumers to participate in our country's economic life fully and with enhanced agency. As currently framed, CDR implementation has a primarily individualistic character which, while it accords with the language of choice and consent used to describe it, may ultimately impair the CDR's capacity to achieve maximal benefit across all social and economic cohorts.

The digital divide

The *Australian Digital Inclusion Index 2020* identified that

> Across the nation, digital inclusion follows some clear economic and social contours. In general, Australians with lower levels of income, employment, and education are significantly less digitally included. There is consequently a substantial digital divide between richer and poorer Australians. (Thomas & Barraket et al, 2020, p 5)

Other cohorts experiencing disproportionate digital exclusion have been observed to include:
- people living outside urban areas
- students from lower income households, whose lack of online access has compounded the educational disruption caused by COVID-19
- older Australians, and
- First Nations people.

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[4] See https://www.pm.gov.au/media/historic-2-3-billion-national-mental-health-and-suicide-prevention-plan

Other literature has also noted digital exclusion among refugee migrants (Alam and Imran, 2015) and people who live remotely (Ali, Alam & Taylor, 2020). Education, employment status, and (inevitably) unaffordability of online access have also been identified as exacerbating the digital divide (Park, 2017).

The authors of the Digital Inclusion Index concluded in 2020 that

> Digital inclusion should take a central role in national policy making and planning, with a greater degree of coordination across sectors and the different levels of government. With the NBN now substantially completed, and the economic and social effects of the pandemic becoming clearer, Digital Ability and Affordability are critical areas for attention. (Thomas & Barraket et al, 2020, p 7)

Recommendation 1: Ongoing rollout of the CDR across the economy should be accompanied by a surge of policy and programme effort to close the digital divide, so that CDR implementation does not exacerbate existing economic and social disadvantage and the CDR can be successfully exercised by a greater proportion of the population.

CDR implementation and the safety of people affected by family violence

As noted previously, social inclusion is protective against violence, abuse and exploitation. Accordingly, measures taken to close the digital divide, as an enabler of social inclusion, may be significant in addressing the burdens of family and domestic violence, and abuse of older people.

Conversely, however, if criteria to become ADRs are not applied with sufficient rigour by the ACCC, and individuals/organisations become ADRs despite not having (or having but not using) appropriate security measures or despite not being 'fit and proper', then people affected by family and domestic violence, or elder abuse, are at heightened risk. For example, if ADRs do not take proper care to verify the identity of someone purporting to exercise the CDR on behalf of another person (such as an older relative), then the scope for financial elder abuse will be increased. Similarly, if identity verification is not carried out appropriately, or data is not kept securely, then a coercive controlling perpetrator may be able to hack into the data of persons whom they are abusing. Technology facilitated abuse is of increasing concern to our practitioners and researchers, and if CDR implementation does not include and apply adequate controls, it risks becoming an attractive avenue through which to perpetrate abuse. Clearly, a balance must be struck between:

- over-regulation to the point where businesses are deterred from becoming ADRs, and
- accreditation processes that are sufficiently rigorous.

Too often, however, the calculation of that balance has been over-weighted towards the convenience of businesses, and regulation has become a pro forma, tick a box exercise with no meaningful oversight or sanctions.

Lax approaches to regulation of trust-critical services such as banking and aged care have grievously harmed too many Australians. This was amply demonstrated through the Final Reports of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the Royal Commission into Aged Care Quality and Safety. The banking, superannuation and financial services sector, and the aged care sector, were

ostensibly subject to market entry/accreditation criteria and ongoing regulatory oversight. Yet providers and regulators notably failed at their respective tasks, over many years, to the acknowledged detriment of individuals and families who trusted them. Despite a welter of reforms, it is yet too early to be confident that the financial system or the aged care system have accomplished the enormous tasks of cultural transformation that would enable Australians to have in confidence those sectors that are necessary to enable our community, and underlying economy, to flourish to its full potential.

Relationships Australia notes that Treasury is currently considering implementation of the CDR in the telecommunications sector. This, too, is a sector with a regrettable track record when it comes to dealing with people facing systemic and structural barriers. A recent example can be found in the orders of the Federal Court that Telstra pay $50 million in penalties for unconscionable conduct in selling mobile phone contracts to First Nations people across three states and territories.[5] Those orders followed action by the ACCC. Another regulator, the ACMA, has recently found it necessary to issue a Remedial Direction to Telstra for, *inter alia*, failing to inform customers of under-delivering internet speeds. Almost 50,000 customers were affected by this conduct.[6] We note that the ACMA is currently undertaking a consultation about how telcos engage with vulnerable consumers, to inform a statement of expectations; Relationships Australia welcomes the ACMA's engagement with this issue. We hope it may lead to measures that reduce digital exclusion.[7]

The CDR Consultation Paper and the CDR website refer to comparison shopping sites as being particularly useful for consumers who seek to exercise their CDR. Such sites, too, have been implicated in misleading and deceptive conduct.[8]

None of the preceding remarks should be taken as opposition to implementing the CDR. As previously noted, Relationships Australia acknowledges its potential to empower Australians. In particular, the CDR could create a more level playing field in sectors where asymmetries of power and information place consumers at considerable disadvantage and act as a disincentive to competition and innovation.

We would, however, urge that the ACCC, the OAIC and the Data Standards Board each be appropriately resourced to fulfil and prioritise their regulatory functions in respect of the CDR in a way that fosters its potential to empower consumers. Such resourcing should enable each of these regulators to proactively inform themselves of the probity and performance of ADRs in fulfilling the accreditation criteria and conducting themselves as ADRs. The regulators should be sufficiently resourced to prioritise the CDR aspect of their roles (given the extensive responsibilities already borne by the regulators), and to promptly identify and address systemic

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[5] See ACCC media release of 13 May 2021 at https://www.accc.gov.au/media-release/

[6] See ACMA media release of 7 July 2021 at https://www.acma.gov.au/articles/2021-07/telstra-fails-inform-customers-under-delivering-internet-speeds

[7] See ACMA, *Consumer vulnerability: expectations for the telecommunications industry (draft consultation)*, at https://www.acma.gov.au/consultations/2021-07/consumer-vulnerability-expectations-telco-industry-consultation-272021

[8] See, for example, ACCC media release of 4 November 2020 at https://www.accc.gov.au/media-release/trivago-loses-appeal-after-misleading-consumers-over-hotel-ads), announcing that the Full Federal Court dismissed an appeal by comparison site Trivago against an earlier decision which found Trivago breached the Australian Consumer Law by making misleading representations about hotel room rates on its website and television advertising.

issues, as well as deal professionally and compassionately with individual consumer complaints.

Finally, we note that addressing digital exclusion is also vital to the ongoing credibility (and sustained take up) of the CDR. If people facing systemic and structural barriers, including digital exclusion, are unable to effectively access complaints, dispute resolution and other accountability mechanisms, then their disadvantages will be compounded and the chasm between them and those on the 'right side' of the digital divide widened.

Recommendation 2

Resource the regulators (the ACCC, the OAIC and the DSB) to prioritise the CDR aspect of their roles to an extent that is proportionate to the potential for an economy-wide CDR to enable innovation and competition – for which consumer confidence in ADRs and associated accountability mechanisms is a prerequisite.

Consultation Questions

Not all of the consultation questions have implications for the positions which we have stated in this submission or relate to matters within our scope of expertise. Our responses to the consultation questions are accordingly limited to Questions 1 and 11.

Question 1   Are there examples of uses cases of particular life events or key consumer activities where access to consumer data within or across sectors could significantly improve consumer experience and outcomes? If so, how should such use cases be prioritised?

Relationships Australia notes that p 15 of the Consultation Paper suggests that government is a sector in which the CDR could be rolled out. This is a very interesting possibility, and could potentially address the information asymmetries that currently exist between taxpayers and government service providers by making more transparent the data that is held about them and how it is used. Seamless and secure data sharing would be a considerable advance, potentially minimising the expense, effort and, in some instances, trauma, of re-telling one's story.

Question 11 Are there any datasets or kinds of data that may or may not be suitable for Consumer Data Right designation (e.g. due to privacy concerns)? Why?

Relationships Australia welcomes the invitation to identify sectors and datasets with elevated privacy concerns.

Relationships Australia considers that safety sensitive data (eg relating to people experiencing family and domestic violence or elder abuse) should be approached with extreme caution in implementing the CDR. We note the suggestion, at p 17 of the Consultation Paper, that

> Consumers may have concerns about the sharing of data with particular businesses, or the sharing of particular types of data, via the CDR. 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. As awareness of the CDR increases, however, consumer familiarity and confidence in the CDR can also grow.

This paragraph contains a concerning *non sequitur*. Sustained trustworthy governance by ADRs and regulators is likely to encourage consumers to exercise the CDR and so build its value. However, measures additional to good conduct and governance will be required to encourage particular groups to engage with the CDR and maximise its value. This is because even best practice implementation and governance of a CDR is not an enabler of personal safety and is unlikely to be acknowledged as such by people affected by certain forms of family and domestic violence, and elder abuse. Similarly, people who have been subjected to institutional abuse, violence or exploitation are likely to remain sceptical about how their data is collected, stored and used. The use of data – *particularly* in combination with other data sets – may be deeply troubling to cohorts with these kinds of experiences.

We note that the Family Safety Branch in the Attorney-General's Department is currently developing a national information sharing framework relating to family violence, family law and child protection and a national register of enduring powers of attorney. This work may also usefully inform Treasury in implementing the CDR in respect of safety sensitive information.

Recommendation 3

Adopt co-design principles to inform implementation of the CDR, approaching consumers and peak organisations with lived experience of safety concerns (including family and domestic violence), elder abuse, institutional abuse and technology facilitated abuse.

Recommendation 4

Consult with the Attorney-General's Department as to synergies and challenges with potential rollout to Government (as suggested at p 14 of the Consultation Paper), and more broadly to datasets that may have personal safety implications.

Conclusion

Thank you again for the opportunity to contribute to this highly significant reform. Should you wish to discuss any aspect of this submission, please do not hesitate to contact me at 02 6162 9300 / ntebbey@relationships.org.au or our National Policy Manager, Dr Susan Cochrane at 02 6162 9300 / scochrane@relationships.org.au.

Kind regards

Nick Tebbey
National Executive Officer

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