



TELSTRA CORPORATION LIMITED

Submission to Treasury's consultation on the Telecommunications draft designation instrument for Consumer Data Right

13 December 2021



01 Introduction

We welcome the opportunity to comment on Treasury's draft designation instrument for Telecommunications Consumer Data Right (CDR).

Telstra supports the development and application of the CDR to the economy, including Telecommunications, in a way which can offer customers the benefits intended by the CDR policy, while reducing the regulatory burden for businesses.

Treasury's proposed scope for the Telecommunication designation is broadly representative of many matters advocated for by the industry during the August 2021 sectoral assessment consultation process. We are appreciative for the consideration of these industry views and the subsequent narrowing of scope being reflected within the draft designation instrument.

In this submission we examine the following key matters:

- Cost benefit analysis informing the scope of designation and rules
- Scope of data sets
- Drafting and definitional matters

While we recognise that some of the matters raised below may be considered during the drafting of the CDR Rules process, there may also be opportunity to limit the scope under the designation drafting and as such we address these matters now.

02 Cost benefit analysis information

We recognise the potential for customer benefits in enhanced product and service information, particularly where life administration can be outsourced to accredited data recipients. The CDR also represents an integral element of the Government's digital transformation strategy to improve the data efficiency and access of the Australian economy. For these reasons, we continue to support the application of the CDR to the economy.

What would be beneficial to the sectoral assessment for telecommunications sector, and the drafting of both the designation instrument and CDR Rules is a clearer articulation of the benefits of applying CDR to telecommunications. We note that the explanatory memorandum to the Treasury Law Amendment (CDR) Bill 2019, identified that that a Regulatory Impact Statement (**RIS**) must be prepared reflecting the net benefits of designation, before a sector is designated.¹

A thorough assessment of the expected benefits to customers (such as the assumed benefits of switching, digital enablement, and reduction in life administrative tasks), as balanced against the costs will mean that Treasury is able to ensure the scope of CDR in telecommunications is appropriate.

Further, we note that the cost assessment provided by Grant Thornton is both heavily caveated and not reflective of the potential expansions which can occur under the rules if the designation is broadly drafted. This includes the significant additional costs of seeking the inclusion of enterprise customers as eligible CDR customers and granular data inclusion (such as voice / SMS usage data, as well as internet/data usage). It is important to ensure that these costs are fully examined early to manage scope creep through the Rules and data standards process which can add significant cost for build and compliance.

Finally, we encourage Treasury to conduct a post-implementation review of the cost to the banking sector to implement the CDR, and a pre-implementation review of the costs expected for energy to

¹ See [Treasury Laws Amendment \(Consumer Data Right\) Bill 2019 – explanatory note](#) – sections 1.51 and 1.52 – also *schedule 1, item 1, paragraph 56AD(1)(b)*



implement CDR. These reflections will help Treasury make more informed assumptions on the sectoral costs for designation for both telecommunications and other future sectors.

03 Scope of data sets

3.0. Customer information

Treasury's proposed designation of 6 – *specified classes of information – information about retail customers and users*, is broadly consistent with the approaches undertaken in the banking and energy sectors.

While we recognise the purpose of including this category of data, we also note that there are potential risks if the scope is not appropriately limited in either the designation instrument, or subsequently under the CDR Rules. For example, in circumstances where there are multiple mobile plans, each being used by different people under a single customer account, would each user's personal information be captured as part of this data set and create potential privacy risks? We encourage further consideration of the intended scope of this category.

The CDR Rules includes a definition of eligible customers which is intended to apply generally across all sectors, but where specific sectoral deviations may occur in the sector-specific schedules. In the case of energy, this sought to exclude particularly large customers from the CDR due to the bespoke nature of their arrangements and the costs to integrate and standardise data for CDR purposes.

Such cost and complexity apply in telecommunications too, particularly in relation to enterprise customers, and niche scenarios such as public trustees or accounts managed by third parties and a clear 'account owner' may not be clearly established due to authorities given on the account. In this instance, a process mirroring that established in energy may be best suited.

Further, in relation to enterprise customers we would encourage an express exclusion for those customers who purchase combinations of business products that have aggregate and customised pricing within the draft designation instrument. The CDR Rules can then provide further definition to this exclusion, to ensure that businesses are not required to incur the cost of integrating enterprise customer systems into CDR implementation programs.

Finally, on eligibility, we encourage customer eligibility to include online enablement to minimise the regulatory impost and information security risks for customers.

3.1. Billing and account information

Under 7(2)(c) of the draft designation instrument Treasury has included information about arrangements for payments to be made in response to such bills (such as direct debit details, details about online payments, and BPAY details).² While this matter may be further narrowed under the CDR Rules, we have concerns that the current drafting may be so broad as to require the provision of information which may be contrary to payment card industry (PCI) compliance requirements, particularly if the CDR Rules allow for others on the account to access and share CDR data. It is unclear currently what use cases could be associated with the specific direct debit details of a customer.

3.2. Product information

Usage data

The draft designation instrument includes information about retail supplies or products. The sectoral assessment notes that under this designation, the CDR Rules could be made that require information such as the total number of calls or SMSs be shared. We would encourage a limiting of the scope, either by way of designation drafting, or under the Rules to exclude voice and SMS. While we accept the

² 7(2)(c) [draft designation instrument](#), December 2021



potential benefits of including data usage (such as those identified in the sectoral assessment), we do not believe that there are any valid use cases for voice and SMS which could justify the cost of implementation – particularly where customers are increasingly utilising OTT services for these types of interactions and the proliferation of unlimited plans for voice and SMS in the market.³

For plans where usage (voice, SMS or data) does not impact the amount paid by a consumer, we strongly support the usage data not being required to be provided. The reason for this is because unlimited plans deliver great benefits to customers, but at costs to providers. These costs are somewhat offset by retailers being able to simplify their processes and systems. If the CDR would require retailers to reinvest in process and systems which may increase the cost, or reduce the benefits to providers.

Bundling services

The current drafting of 8(f) of the draft designation instruments (related to bundling arrangements) is unnecessarily broad for the purposes of telecommunications designation. The current wording suggests that bundling information for both telecommunications and non-telecommunications products are captured. As non-telecommunications products may be subject to their own designation obligations, we do not consider this to be within the scope or intent of Treasury and encourage amendment to the language.

3.3. Exclusions

Hardship exclusion

Treasury has proposed an explicit exclusion within the designation instrument of information about whether a particular customer is participating in a carrier's or a carriage service provider's financial hardship program.⁴ This was not the approach taken in energy, where hardship was instead excluded under the CDR Rules.⁵

We encourage Treasury to adopt the same approach for telecommunications, and not place an explicit exclusion on this data set within the designation instrument. By not explicitly excluding hardship data within the designation instrument, Treasury can align future CDR Rules and approaches across sectors. We see both risks and benefits in including hardship data as a CDR data set. The benefits identified by the Australian Competition and Consumer Commission (**ACCC**) and Treasury in the energy sector consultations included that the data would help contextualise billing information⁶, and assist customers being able to seek third party assistance in relation to the data⁷.

Other potential future use cases for hardship data, includes where financial counsellors act as trusted advisors and can directly access specific information to assist customers, or where the Telecommunication Industry Ombudsman (**TIO**) acts as an accredited data recipient to be able to assist and assess individual customer circumstances with more detail and efficiency.

We also acknowledge the potential risks for consumers, including potential financial or services exclusion or discrimination. For this reason, we would defer to the consumer groups, advocates and financial counsellors as to whether on balance, hardship data being excluded may help individual customers. However, aligning the approach taken across sectors by determining this matter under the CDR Rules will allow for further discussion and exploration of this matter in a consistent way.

Materially enhanced data

³ See Telstra's [previous submission to Treasury](#) on August 2021

⁴ 7(2)(b) [draft designation instrument](#), December 2021

⁵ See [Consumer Data Right Amendments Version 4](#)

⁶ See [ACCC energy rules framework consultation](#) July 2020

⁷ [Treasury response to energy Privacy Impact Assessment](#), 22 June 2020



The draft designation instrument identifies that information is not materially enhanced information where the derivation of the information was undertaken in order to meet a regulatory requirement. We note that ACCC advised in their Mobile Infrastructure Report their intention to standardise coverage maps.⁸

As Treasury has previously identified network coverage as a potential inclusion for Telecommunications CDR, we would encourage coordination between these organisations to ensure that any future requirements for such a data set is cognisant of the data standards required for CDR to ensure businesses will not need to build twice for these requirements.

04 Other drafting and definitional matters

4.0. Earliest holding day

We encourage Treasury to consider the earliest holding day to be 1 July 2021 for the designation instrument. Having to retrieve historical data, particularly in the case where business process routinely archives this data, represents both a timely and expensive process for data holders.

Based on the application of historical requests for both banking and energy to-date, we consider that a two year earliest holding day for telecommunications (assuming the earliest possible commencement of 1 July 2023) in the designation instrument is more consistent with valid uses cases articulated by accredited data recipients (**ADR**). We also encourage ongoing engagement with stakeholders on the application of potential historical data requests under the CDR Rules.

We recognise that historical requests will be considered further under the CDR Rules, and would like to engage with Treasury on this point further.

4.1. Priority assistance

Under 8(2)(h) Treasury extends retail offer information to include information *about priority assistance services that are available for such products*. Although priority assistance is a fairly well-recognised concept, we suggest that this term be defined by reference to the various telecommunications legislation / regulations (e.g Part 6 of Schedule 2 to the *Telecommunications Act 1997* (Cth), the Priority Assistance for Life Threatening Medical Conditions industry code and the Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019).

⁸ See [ACCC Mobile Infrastructure Report 2021](#)