

13 July 2022

Ms Elizabeth Kelly PSM
Statutory Review of the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600
By Email: CDRstatutoryreview@treasury.gov.au

Dear Ms Kelly

Consumers and the Consumer Data Right

The Australian Banking Association (**ABA**), Financial Rights Legal Centre (**FRLC**), Consumer Action Law Centre (**CALC**) and the Consumer Policy Research Centre (**CPRC**) welcome the opportunity to raise key consumer issues in relation to the Consumer Data Right (**CDR**).

In this letter, we highlight the need for the future rollout of the CDR to incorporate key safety principles to support positive consumer outcomes. Our organisations have provided separate submissions to the Statutory Review of the CDR¹ however, the purpose of this letter is to outline shared areas of interest.

At the heart of our concerns is the need for the CDR to incorporate safety-by-design principles and to ensure that as the CDR evolves, consumers remain at the heart of decision-making. There is also a need to better evaluate the goals and outcomes of the CDR in Part IVD of the *Competition and Consumer Act 2010* (the Act) to guide better decision-making. Finally, we note joint accounts and trusted advisers as examples where these principles and approaches can improve outcomes over time.

Safety-by-design

The objects of Part IVD include enabling consumers to require information relating to themselves 'to be disclosed safely.' The eSafety Commissioner has developed a set of safety-by-design principles to prevent products and services from being misused to cause detriment to customers or third parties.² Members of all our organisations support these principles, which consist of three key components that are relevant to the effective development of the CDR. These principles sit alongside the need to ensure security and privacy.

The first key principle is the idea that the potential risks of online interactions should be assessed upfront and there should be active steps taken to engineer out potential misuse, reducing people's exposure to harms. The second requires the need to support the dignity of users and to design features and functions that empower individuals with choice and act in the best interests of those users. The final principle provides that there should be an ability for consumers to best understand the risks they face and options to address those risks upfront.

All these principles are relevant to the current and future rollout of the CDR, along with key privacy and security principles. We therefore recommend embedding these into the policy design of future regulatory settings, to ensure that the objects of the CDR in relation to the safety of consumers is appropriately addressed from the inception of the new rollout phases. Such principles are also useful in benchmarking the performance of the CDR in meeting those goals, as further discussed below.

¹ ABA submission: <https://www.ausbanking.org.au/submission/statutory-review-of-the-consumer-data-right/#:~:text=The%20ABA%20makes%20a%20number,before%20rolling%20out%20write%2Daccess>.

FRLC submission: https://financialrights.org.au/wp-content/uploads/2022/05/220421_CDRIndependentStatRev_FINAL.pdf,

CPRC submission: <https://cprc.org.au/submission-statutory-review-of-the-consumer-data-right-issues-paper/>

² <https://www.esafety.gov.au/industry/safety-by-design/principles-and-background>

Key performance indicators

There is currently no clear measure for what a successful CDR regime looks like. We encourage the Government to develop and publish a transparent and clear set of ‘success metrics’ that are linked back to the objects of the Act, and to track progress against these metrics.

As noted above, the design of key metrics should be linked to consumer wellbeing, empowerment and choice, safety and security.³ Together, these governance measures should assist Government and stakeholders to assess the efficacy of the scheme, as well as to prioritise future changes.

As part of identifying key success metrics, we further recommend the Government complement this core consumer safety performance indicator with a cost-benefit analysis to identify those datasets that will provide the greatest value for consumers as the economy-wide roll-out of CDR continues. A key element of the cost-benefit analysis should also give due consideration to factors that contribute to consumers experiencing vulnerability.

In relation to the future directions and rollout of the CDR to other sectors, we believe the Government should prioritise datasets that are most valuable for retail consumers and small businesses, which we consider would encourage competition, innovation and positive consumer outcomes. By prioritising these products with most value for consumers and businesses and measuring whether the rollout is meeting the scheme objectives based on key performance indicators such as those discussed above, the CDR will maximise benefits for consumers while ensuring important safety, security and privacy protections are in place.

Applying key performance indicators: Joint accounts and trusted advisers

Our organisations have previously raised concerns regarding the potential design of the joint accounts measure and regarding trusted advisers. Below we briefly note these to serve as examples of where the safety by design principles and more measurable metrics may have assisted in ensuring the best outcomes for consumers.

The development and implementation of key safety metrics will assist in the formation of regulatory changes to the CDR and enable an appropriately benchmarked evaluation of changes over time.

Joint accounts and consent rules

The ABA, FRLC, CALC and CPRC recognise the potential benefits of a regime that empowers consumers to use their own data to make better informed financial decisions. However, a critical object of the CDR is for data sharing to occur safely by maintaining the privacy and security of customer data.

We note that the implementation date for major banks to implement the new opt-out mechanism for joint accounts has now passed (1 July 2022) and other banks are currently building this opt-out functionality to meet the 1 October 2022 compliance date.

We have expressed concerns over the current opt-out model and have previously recommended it be implemented as an opt-in model to ensure the safety of users. We recommend the model now be reconsidered in the context of the rollout of payments initiation to allow time to evaluate the model and to determine whether sufficient protections are in place for consumers, particularly in relation to privacy, complaints handling and liability.

The role of the trusted adviser

Under recent changes to the CDR rules, CDR data can be shared with ‘trusted advisers’ who are not accredited under the CDR regime and are not subject to the rules or privacy safeguards. Although trusted advisers must be members of professions which are regulated, these professional obligations offer less consumer protections than the CDR accreditation regime. We consider that consistent

³ Full detail of success metrics outlined in CPRC’s submission on the Strategic Assessment of CDR in August 2021 is available at: <https://cprc.org.au/submission-to-treasury-consumer-data-right-strategic-assessment>.

safeguards and protections should apply to all parties that receive or hold CDR data, with trusted advisers adhering to the standards as required by CDR accredited entities.

For example, one important difference in the level of consumer protections between trusted advisers and accredited participants is the ability for consumers to be able to make complaints about trusted advisers and have them resolved in an efficient and effective manner.

Under the Comprehensive Credit Reporting framework, any entity listed on a credit report must be a member of an external dispute resolution (**EDR**). This empowers consumers to make a complaint where something has gone wrong. In a similar vein, where consumers suffer a loss due to an error by any recipient or holder of CDR data, they should be able to complain to an EDR scheme and these parties should be required to be members of the scheme.

We look forward to working with the Government to support the successful rollout of the CDR that balances the need for efficiency, innovation with that of safety of customer data.

Thank you for the opportunity to provide feedback. If you have any queries, please contact me at Prashant.ramkumar@ausbanking.org.au.

Yours sincerely,



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