



SUBMISSION PAPER:

## **Submission to Federal Treasury**

# **Statutory Review of the Consumer Data Right**

**May 2022**

*This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 400 FinTech Startups, VCs, Accelerators and Incubators across Australia.*



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## About this Submission

FinTech Australia has been a consistent advocate for policy reform to drive the implementation of the Consumer Data Right (CDR) as it applies within the banking and financial services industry.

We have made numerous submissions to Federal Treasury, the Productivity Commission, Open Banking Inquiry, the Australian Competition and Consumer Commission (ACCC) and data on the need for a framework for the sharing of financial data and on the details of that framework.

Throughout this process, we have emphasised the need for a regime which is flexible enough to enable participation by a range of providers using a range of business models. We consider this will provide the greatest scope for innovative solutions to be developed for consumers.

We welcome the opportunity to provide further comments on the current state of implementation of CDR and possible directions for the future.

This document was created by FinTech Australia in consultation with its 400 members.

This submission has been endorsed by the following FinTech Australia members:

Intuit Australia

Fiskil

Sherlok

CitoPlus

### **Submission Process**

In developing this submission, a roundtable was held to discuss key issues.

We also acknowledge the support and contribution of K&L Gates to the topics explored in this submission.



## FinTech Australia's Comments

### **Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?**

FinTech Australia supports the broad aims of Part IVD of the Competition and Consumer Act 2010 including:

- enabling consumers in certain sectors to share their data safely, efficiently and conveniently;
- allowing any person to access information about goods or services where the consumer is not identifiable or reasonably identifiable; and
- creating more choice and competition.

However, Fintech Australia considers that there has been too much emphasis given to embedding enhanced privacy controls into the CDR regime - granting protection to CDR data above and beyond the protection provided to any other data under Australian law, even sensitive medical data. CDR provides a unique mechanism for authorised data recipients to interface directly with data holders through APIs - Fintech Australia supports enhanced data security and privacy considerations in these APIs. However, applying those same data security and privacy considerations to CDR data throughout its lifecycle (even extending those protections to data derived from the CDR data) is unwarranted. Changes to Australian privacy laws should occur on an economy wide basis, rather than applying only to one mode of data collection within a handful of industries.

Some of our members suggest that the concept of derived data is challenging for business data sharing and propose that it could be removed from the CDR rules. CDR should be limited to facilitating the transfer of CDR Data (as designated) from ADH to ADR. Therefore, CDR protections would apply only to transfers of raw CDR data from ADH to ADR, and from ADR to third parties providing consolidated account information back to the consumer.



While our members believe the objects are appropriate, FinTech Australia considers that the objects and the current CDR model are not optimally aligned. As the focus of CDR has shifted over time, the emphasis placed on privacy issues for consumers has increased relative to other objects. FinTech Australia acknowledges that there is great challenge in trying to balance the "competing forces" of the key objectives. Offering consumers both access and control, whilst also providing access to data for third parties within a trusted framework is difficult.

FinTech Australia notes that the Productivity Commission observed that while a regime such as the CDR may "provide features that match those inherent in privacy provisions... it is not, not intended to be a replica of privacy law". To this end, prior to an economy-wide expansion of the CDR, our members believe that a rebalancing and refocus on the objects is essential to ensure the sustainability and success of the CDR.

FinTech Australia considers that current barriers to economy wide expansion of CDR include limited access to high value datasets and a lack of traction and education for consumers.

### *Limited access to Data Sets*

To date, the current focus of CDR has been on banking data. As there are pre-existing, effective solutions for sharing data of this kind (eg bilateral data sharing arrangements and screen scraping), this has not been a significant catalyst for consumer takeup, to date. While consumer uptake has been limited, it is hoped that as the available datasets grow, consumer interest in CDR will also grow. Government datasets are an important piece of this puzzle.

### *Lack of Traction for Consumers*

Our members believe that a necessary prerequisite for economy wide expansion is traction for consumers. Positive consumer experience with CDR will be a decisive factor as to whether they re engage with CDR moving forward. If consumers have poor experiences in open banking, there is a risk to future implementation across the economy. Consumer uptake will be essential to economy-wide expansion. A core concern of our members is the friction of consent being too great. There are opportunities to reduce the friction, which works to discourage consumers from sharing data. Whilst the requirements of CDR are clear and logical, the provisions do not



suit the digital environment or align with consumers expectations of a digital experience. Our members believe that successful adoption by consumers and businesses will be underpinned by the relative simplicity and speed compared to alternatives such as screen scraping, provided the CDR regime is sufficiently flexible (as described above).

### *Lack of Education for Consumers*

Our members believe that the level of knowledge and understanding about the CDR in consumer populations is lacking and will present a persistent barrier to economy-wide expansion. Enhanced consumer awareness may generate consumer uptake and motivation. One approach to this would be for the government to market CDR to consumers. This could include for example broad publication of data evidencing success in uptake.

A broad education campaign may have merit, but would also need to be coupled with active participation and engagement by the existing data holders. These organisations have the capacity to greatly influence their customer base in favour of, or against, any new services built upon the CDR.

Any education campaign should be targeted at a small number of existing concrete use cases. The education material should be easily accessible to the consumer anytime. So, an user-friendly, crisp and compact website should be maintained. This website can be similar to Moneysmart ([moneysmart.gov.au](http://moneysmart.gov.au)) website.

While more consumers are now comfortable transacting in the digital economy, there remain pockets of the community which would be reluctant to transact online. An evolving CDR could provide such consumers with more confidence to engage in the digital economy, knowing that they remained in control of how their personal information is being used.

**Do the existing assessment, designation, rule-making and standard-setting requirements of the CDR framework support future implementation of the CDR, including to government-held datasets?**



Our members have highlighted opportunities to improve the efficiency of the CDR framework. The legislation in its current form, with a series of instruments arguably operates as an enhanced privacy regime which in turn, drives up the cost of compliance and increases the complexity for participants. If modernisation of the general privacy laws is required, this should occur across the board rather than focussing on data which happens to have been obtained through the Consumer Data Right. This shift in approach becomes even more important as the scope of the Consumer Data Right expands. To that end, it is essential that the CDR not be an interim solution prior to a more comprehensive review of the Privacy Act. Some of our members have suggested that legislation could be amended to more closely align with the principles of the UK Open Banking regime. As such, this would see privacy requirements decoupled from the CDR regime. Future implementation of the CDR would be supported by a review of the framework to reduce the prescription and enhance flexibility for parties.

Additionally, FinTech Australia recognises that a number of entities are involved in the assessment, designation, rule-making and standard setting processes associated with CDR (including Treasury, ACCC, OAIC, etc). Whilst multiple bodies provide comprehensive support to the CDR Framework, this fragmented approach makes coordination and rapid development difficult. FinTech Australia members believe that the addition of a separate entity to coordinate CDR would support its future implementation. An independent body could perform the role of a "practical entity" where participants may share real world practical issues and the practical entity may deal with the issues.

Our members have observed that the focus of CDR is on privacy and that greater focus on innovation may support the success of the framework.

FinTech Australia strongly supports a CDR which facilitates switching between products in the industries which are within scope. Competition will only be enhanced through the CDR if, in addition to better access to comparison information, the consumer data right also reduces the existing friction for consumers trying to switch providers. Within the banking and financial services sector, significant barriers to switching exist, such that consumers often stay in inferior or more expensive products, even when they know the products are inferior. We expect the same is true in other segments also. We consider this could be one of the most influential aspects of CDR, as it enables consumers to act on the information they receive. This is the kind



of use case which will drive adoption and which will also encourage dataholders to actively engage with CDR (rather than just treating it as a compliance exercise).

As noted above, the addition of further datasets would be welcomed by Fintech Australia.

## **Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit consumers?**

FinTech Australia members believe that the CDR Rules and standards framework needs to be more agile. This could be facilitated through adopting a more principles-based approach and removing some of the detailed prescription which is currently embedded in the CDR Rules. For example, the CDR Representative model has parallels with the Authorised Representative model within the AFSL regime. However, the CDR Rules are significantly more prescriptive, regulating the terms of the agreements between parties, how data can and cannot flow, how outsourcing arrangements can and cannot be structured. This level of prescription is hampering development.

With the focus being on privacy protections and restrictions of access, the CDR framework benefits incumbents and larger organisations that can afford large and ongoing maintenance costs.

The current operation of the statutory settings limit the development of CDR powered products and services to benefit consumers. Our members have acknowledged that whilst statutory setting changes will be difficult, that a key part of the ongoing success of the CDR will be developing the capacity to monitor, measure and enforce improvements for the participants.

## **Could the CDR statutory framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?**





Some of our members believe that machine readable data should be made available to consumers. Whilst not all consumers will be able to take advantage of this data, it reduces the barriers to entry for people who are interested and in a position to do things with this. Some Fintech Australia members have observed benefits of providing access to machine readable data to consumers, who are able to take advantage of the data. We note however that there may not be large demand for direct sharing to consumers through CDR.

Additionally, consumers already have the ability to export their transaction data for many services more efficiently than could be done through CDR. As such, we consider that the focus of CDR rule development should be on facilitating smooth sharing of CDR data by consumers within the ecosystem.

Additionally, some of our members see value in product reference data being more widely accessible and broadly applied across sectors. For example, product reference data of foreign currency exchange pricing which could be of great benefit for consumers looking to compare products within the market. Currently comparison in this market, as with many others, is difficult due to lack of transparency in pricing as well as the difficulty for third party providers to make sense of this area for their consumers. Product reference data presents an opportunity to open up key market for increased competition.

Outside of privacy considerations, any expansion to the CDR would need to have regard to protecting the interests of consumers. We understand some consumer groups have raised concerns about aspects of the open banking regime and the potential impact on, for example, access to credit for vulnerable customers. We understand these concerns and agree that the needs of vulnerable customers need to be protected. However, in our view, these are not issues to be solved within the CDR specifically. Increasing access to data to enable, to continue the example, more informed lending decisions should, in a functioning market, ultimately lead to a better alignment between lender and borrower - a better allocation of risk, more appropriately priced. We suggest that any unintended consequences of that increased access to data should be addressed through technology independent consumer protection measures under existing lending laws.



## **Are further statutory changes required to support the policy aims of CDR and the delivery of its functions?**

Changes to the CDR rules should include proportionality considerations to ensure that small providers and new services are not burdened by excessive costs. There are opportunities to leverage other standards already in place, including the Privacy Act. An expanded CDR could involve a range of different levels of access (read / write), different volumes of information (consolidated broad dataset or more limited single purpose information) and different participant roles.

The accreditation model needs to ensure that those who present the most risk face the most scrutiny and those who present only a limited risk (such as those consuming but not storing limited CDR data) face a more limited hurdle to participation. The current approach to accreditation models is overly prescriptive, forcing businesses to adapt business models to suit, rather than facilitating those models.

Another challenge is, as noted above, the focus on affording CDR data special protection throughout its lifecycle. Our members have suggested that focus could be placed on ensuring the security of the transfer of data between the bank and the data recipient, rather than seeking to regulate all other flows of CDR data through the ecosystem.

Our members would suggest that changes include periodic review of the sectors to determine if there are new datasets which can be obtained for expansion of the CDR. As a developing space, ensuring ongoing consultation and review of all sectors will be vital as new or previously untouched areas of data are revealed.

There are opportunities to introduce public goals, targets and metrics to track progress and participation rates. FinTech Australia believes that traction with customers will increase with people getting excited about CDR. We understand that there has previously been a suggestion to introduce and track metrics and believe that this is a valuable suggestion.

Additionally, changes to approaches to digital identity verification are important. Without economy-wide identification methods, there is great challenge in ensuring that consumers are



properly consenting. The banking and financial services sector requires tools for verification of identity. Currently, through tailored AML Programs, bespoke technology solutions and a handful of aggregators, entities largely design their own ways of dealing with ID verification issues. A broad CDR could enable standardised tools for ID verification, acting as an enabling technology for existing and emerging providers. While the challenges of ID verification are perhaps most apparent within banking and financial services, they exist in a range of other sectors and any solutions could operate across industry barriers.

Finally, our members believe that greater investment in addition to increased emphasis on scaling of use cases, rather than focus on rules and frameworks will result in better outcomes for the CDR. It has been observed by our members that in other jurisdictions where there have been investments in the development of use cases, this had led to improved outcomes. An example of this is Nesta in the UK. Nesta Impact Investments provides financial, knowledge and network capital to innovative tech ventures with a social impact. Whilst Nesta was initially a publicly supported national endowment, it now operates as an independent charity. This concept of government sponsored innovation however may encourage the uptake of CDR.



## About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 400 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions:

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