



Australian Government

Statutory Review of the Consumer Data Right

Issues paper

Reviewer: Ms Elizabeth Kelly PSM

March 2022

© Commonwealth of Australia 2022

This publication is available for your use under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury.

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see www.pmc.gov.au/government/commonwealth-coat-arms).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

Contents

Statutory Review of the Consumer Data Right	1
Overview of the Consumer Data Right	4
Key consultation points for discussion	9

Statutory Review of the Consumer Data Right

On 14 February 2022, Minister Hume announced the commencement of a statutory review on the operation of the Consumer Data Right (CDR) and the appointment of an independent reviewer, Ms Elizabeth Kelly PSM.¹

To support Ms. Kelly conduct the Review, a Secretariat has been established within Treasury.



Purpose of the Review

Section 56GH of the *Competition and Consumer Act 2010* (the Act) requires an independent review of the operation of Part IVD of the Act, which contains the primary legislation for the Consumer Data Right (CDR). A written report of the review must be given to the Minister in July 2022.

The requirement to conduct a review recognises the unique nature of the CDR and will provide CDR-designated sectors, consumers, and interested parties, with an opportunity to reflect on the risks, issues and opportunities presented by the CDR. The Review will consider whether the existing statutory framework supports the evolution of the CDR and is fit-for-purpose to realise the CDR's objectives.

Terms of Reference

The CDR Statutory Review will consider the following questions:

- Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?
- 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?
- Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit consumers?
- Could the CDR statutory framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?
- Are further statutory changes required to support the policy aims of CDR and the delivery of its functions?

Background to the Review

The Review will be undertaken in the context of significant policy and governance developments in the CDR. This includes the roll out of the CDR to the banking sector, the introduction of rules to bring the energy sector into the CDR from late 2022, and the finalisation of the sectoral assessment and designation process for the telecommunications sector. The practical application of the CDR regime

¹ The announcement by Minister Hume can be found here: <https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/statutory-review-consumer-data-right>

to these three sectors provides a good opportunity to reflect on the efficacy of the statutory framework as the CDR grows.

The CDR is a multi-year, complex initiative that will continue to grow and evolve over the next decade. As such the Review will need to consider the policy, governance and any other relevant recent developments in the CDR in responding to the Terms of Reference, including:

- The Government response² to the final report³ of the Inquiry into Future Directions for the Consumer Data Right, which provides options to expand and enhance the functionality of the CDR.
- The release of Government's Digital Economy Strategy⁴ (announced as part of the 2021-22 Budget), which sets out a roadmap of initiatives to ensure Australia is a world-leading Digital Economy by 2030 – including the Australian Data Strategy,⁵ and the expansion of the Digital Identity System.
- The CDR Strategic Assessment to inform the future expansion of the CDR, with a relevant consultation paper released by Treasury in July 2021.⁶
- Updates to CDR rules to support greater participation within the CDR ecosystem.
- International developments in consumer-initiated data portability.

Consultation Process

The Review will be informed by a public consultation and targeted engagement with representatives from industry, consumer and privacy advocates and other interested parties. This issues paper is designed to support these consultation processes and provide additional contextual information to support engagement on the Reviews' Terms of Reference.

Request for feedback and comments

Interested parties are invited to comment on the issues raised in this paper by Friday 20 May 2022. Submissions may be lodged electronically or by post.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their

² The Government response to the *Inquiry into Future Directions for the Consumer Data Right*, December 2021, <https://treasury.gov.au/publication/p2021-225462>

³ The final report of the *Inquiry into Future Directions for the Consumer Data Right*, December 2020, <https://treasury.gov.au/publication/inquiry-future-directions-consumer-data-right-final-report>

⁴ Further content concerning the *Digital Economy Strategy* can be found here: <https://digitaleconomy.pmc.gov.au/>

⁵ Further content concerning the *Australian Data Strategy* can be found here: <https://ausdatastrategy.pmc.gov.au/>

⁶ The consultation paper and *Strategic Assessment Outcomes* report can be found here: <https://treasury.gov.au/publication/p2022-242997>

submission to remain confidential should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Closing date for submissions: 20 May 2022

Email CDRstatutoryreview@treasury.gov.au

Mail Secretariat
Statutory Review of the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries Enquiries can be initially directed to media@treasury.gov.au
Media enquiries should be directed to medialiaison@treasury.gov.au
or +61 2 6263 2300.

Overview of the Consumer Data Right

The CDR is a significant, economy-wide reform designed to empower consumers to benefit from the data Australian businesses hold about them and in doing so strengthen innovation, competition and productivity. An economy-wide CDR is a key part of the *Digital Economy Strategy* – the Government’s roadmap for Australia to become a leading digital economy and society by 2030.

The CDR was conceived of as a right by the Productivity Commission in March 2017,⁷ based on the benefits it could provide to consumers and businesses and its potential to enhance competition. The Productivity Commission identified that creating a right of this kind would fundamentally reform Australia’s competition policy in a digital world.

In July 2017, the *Review into Open Banking* was commissioned to recommend the most appropriate model for an Open Banking regime in Australia. Giving regard to the earlier work of the Productivity Commission, the final report of this review positioned Open Banking as a component of a more general right for consumers to control their data in Australia – the CDR. The final report of the *Review into Open Banking* set out four key principles, which have guided the implementation of the CDR in Australia.⁸ These are that the CDR should:

- **Be consumer focussed.** It should be for the consumer, about the consumer, and seen from the consumer’s perspective.
- **Encourage competition.** It should seek to increase competition for products and services available to consumers so that they can make better choices.
- **Create opportunities.** It should provide a framework from which new ideas and business can emerge and grow, establishing a vibrant and creative data sector that supports better services enhanced by personalised data.
- **Be efficient and fair.** It should be implemented with safety, security, and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed.

CDR statutory framework

The CDR statutory framework originated with *the Treasury Laws Amendment (Consumer Data Right) Bill 2019*, which received Royal Assent in August 2019. The statutory framework comprises of four core components:

- Part IVD of the Act, which contains the primary CDR legislation, and establishes all other components of the legislative framework,
- CDR Designation Instruments made by the Minister pursuant to Part IVD of the Act, which designate sectors of the Australian economy for the purposes of the CDR,
- the Consumer Data Right Rules (the Rules) made by the Minister responsible for the CDR. The Rules set out the circumstances in which data holders are required to disclose data, and to whom, in response to a valid consumer request. They also set out consent requirements, how data may be used and privacy safeguards, and
- the Consumer Data Standards (the Standards), which set the technical requirements by which data needs to be provided to consumers and accredited data recipients (ADRs) within the CDR system – ensuring safe, efficient, convenient, and interoperable systems to share data are

⁷ Refer: *Data Availability and Use – Productivity Commission Inquiry Report*, No. 82, March 2017, <https://www.pc.gov.au/inquiries/completed/data-access/report/data-access.pdf>

⁸ Final report of the *Review into Open Banking*, <https://treasury.gov.au/consultation/c2018-t247313>

implemented. Where the Rules require compliance with the standards, a breach of the Standards may constitute a breach of the rules, and Standards have a contractual effect between data holders and recipients in certain instances.

Before the CDR can be applied to a new sector or dataset, a detailed sectoral assessment must be undertaken, summarised in **Attachment A**, requiring the Minister to consider several factors prior to designation.

CDR roll-out to date

Banking

The CDR was first implemented in the banking sector launching on 1 July 2020, where it is known as Open Banking. The majority of Australian banking consumers are now able to access the CDR to securely and conveniently share their banking data to access better-value products and services tailored to their individual circumstances.

As of 15 March 2022, 107 data holder brands are now live in the CDR system, representing a combined market share of more than 97 percent of Australian household deposits. The number of accredited data recipients (ADRs) has also been steadily growing; as of 15 March 2022, there are 29 ADRs, 16 of which are active. ADRs are already and expected to use CDR data to provide services to consumers, such as budgeting, bill payment and financial management apps, streamlined credit approval processes, and the creation of in-depth financial overviews to assist consumers on their home-buying journey.

Energy

The expansion of the CDR to the Energy sector is well advanced. On 12 November 2021, the Hon Jane Hume, Minister for Superannuation, Financial Services, and the Digital Economy made energy-specific CDR rules that include phased compliance dates. Introducing the CDR in the energy sector will provide Australian households and businesses with more accurate information about their energy use and plans.

Commencing in November 2022, energy consumers will start to benefit from secure and easy sharing of data about their own energy use and connection. For example, this could include supporting informed decisions and greater insights on consumers' energy usage and expenditure to identify better value products and service offerings.

Telecommunications

In January 2022, the telecommunications sector was designated as the third CDR sector, following banking and energy. Introducing the CDR into the telecommunications sector will enable information about telecommunications products and basic telecommunications consumer data to be shared in a safe and efficient manner. Consumers will be empowered to access better-value and personalised products and services, such as more accurate information about their internet consumption, phone usage and product plans so they can more easily compare and switch between providers.

The rollout of the CDR in the telecommunications sector is expected to create many benefits for consumers, including better product comparison, tailored product recommendations, and services that help consumers save time and money in accessing telecommunications related products, as well as supporting more informed financial decision making when telecommunications data sets are combined with other CDR data.

Recent developments and future directions

A more consumer-centric and agile approach to economy-wide expansion

In the second half of 2021, to inform the prioritisation and sequencing of future expansion of the CDR, Treasury undertook a rapid, whole of economy assessment. The process involved significant domestic and international consultation and provided significant insights into the broad scope of potential CDR use-cases and consumer outcomes. The findings from this process were made publicly available in the *Strategic Assessment Outcomes* report that was published on 24 January 2022 and informed the Government's announcement of 'Open Finance' as the next priority area for expansion.

Strategic Assessment Report: key factors to support prioritise and sequence CDR expansion

- Prioritise datasets that build on existing dataset(s) or are highly complementary to support faster ecosystem growth.
- Prioritise datasets that support multiple use cases, broad innovation, and user journeys rather than simple switching use cases.
- Focus on friction points for consumers that can be addressed through data driven innovation and standardisation.
- Consider how the CDR might interact with any existing data-sharing mechanisms already operating in a sector.
- Consider maturity of ICT infrastructure and digital capability of sector, as well as the proprietary nature of datasets.

Open Finance

Open Finance expansion will see the CDR expand in an agile and use-case focussed approach – bringing high-impact, lower-cost datasets from across general insurance, superannuation, merchant acquiring and non-bank lending service providers into the CDR.

The announcement of Open Finance follows the completion of the CDR Strategic Assessment, which found there were clear and immediate benefits in expanding the CDR to Open Finance by building upon data already contemplated to be shared under the framework. Open Finance will also support multiple use cases beyond provider switching, alleviate friction points for consumers through data driven innovation and standardisation, and potentially enhance existing data-sharing practices in the related sectors.

Consultation also highlighted that unlocking public sector data, with consumer consent, could drive private sector innovation and improve how consumers can more seamlessly use data services across the public and private sector.

The Government will be commencing consultation on the first phase of Open Finance in 2022, with a view to assessing and designating relevant datasets by the end of the year. By expanding the CDR through Open Finance, consumers will be empowered to make the best financial judgments for their needs when choosing a superannuation strategy, general insurance product or credit provider.

A regular economy-wide scan will help calibrate further CDR expansion and respond to an evolving data ecosystem and changing consumer needs.

Future Directions for the CDR

In December 2020, the Government announced the release of the final report of the Inquiry into Future Directions for the Consumer Data Right led by Mr Scott Farrell.

The *Inquiry into Future Directions for the Consumer Data Right* report made 100 recommendations to expand the CDR by enabling greater consumer data empowerment and deeper functionality, an economy-wide foundation, a more integrated data ecosystem, and realising international digital opportunities.

The Government response to the *Inquiry into Future Directions for the Consumer Data Right*, released in December 2021, agreed to 94 of the report's recommendations. The Government's response commits to significantly strengthen and deepen the CDR's functionality through implementing third-party action and payment initiation, along with other recommendations to grow the CDR ecosystem and foster greater international engagement.

Payment and action initiation will particularly be a game-changer for CDR, and it is expected to drive greater participation and innovation in CDR. These developments will require legislative amendments and will be the subject of a separate process of consultation to inform the Bill. Relevant findings from the CDR Statutory Review will also inform the design of the legislation.

Potential CDR benefits and Statutory Review considerations

At its core, the CDR empowers consumers (both individuals and businesses) to direct that data held about them is shared with accredited persons and trusted third parties so that they can derive direct benefits. Following the launch of Open Banking, a range of new CDR-powered products and services have been launched that will make it easier for individuals and small businesses to compare products, switch providers or talk to their current provider to access a better-value deal. The flow on benefits are expected to encourage greater competition in the marketplace and lower prices, helping to drive the economy and spur innovation.

However, as the CDR continues to grow, it can potentially provide a broader range of benefits, well beyond simple switching use cases in sectors like banking and energy. For example:

- As the CDR expands across more sectors of the economy, brings in datasets from across a greater range of consumer touch points, and enables consumers to direct actions on their behalf, the benefits for consumers will become even more profound. The CDR has the potential to not only help consumers access better value deals and services but revolutionise how consumers navigate some of the most important decisions and milestones in their lives. This could include, for example, making a personalised plan for retirement taking account of your personal financial circumstances, quickly and easily applying for a mortgage by the push of a button, or helping you navigate disaster relief in the aftermath of unexpected events.
- The recent CDR Strategic Assessment highlighted the benefits of Australia's economy-wide approach to data portability and the subsequent opportunities for the CDR to provide the 'central nervous system' of Australia's data economy. This opportunity reflects the potential of the CDR as a safe, convenient, and extensible method of transferring data.
- The CDR has the potential to transform the development of products and services by putting the consumer at the heart of innovation. In a digital world, consumers obtain value more readily from transactions that cross sectoral boundaries and traverse the entirety of the economy. By empowering consumers through the CDR, it is expected that there will be a shift in the types of products and services that are developed in the market to those that more readily meet consumer expectations and offer more personalised services. In the future, this potential could mean that CDR makes interactions across government and private sector services seamless, it could help people navigate complex and stressful life events with greater ease, and it could help address social outcomes or support consumers making values-based purchases.
- The final report of the *Inquiry into the Future Directions of the Consumer Data Right* also detailed the opportunities for connecting the CDR to the broader data economy. This includes developing

the CDR in a manner that supports the use of interoperable identity verification and consumer authentication and considering the broader applicability of the Data Standards Body in standards setting. It also considers how the CDR accreditation process could be leveraged to create increased trust in data holding or transfer outside of the CDR system.

- As consumers engage more online and data increasingly becomes a part of everyday interactions, the CDR can provide the safe rails for individuals and businesses to transact. With such a rapid pace of change, the CDR will need to be agile and responsive to move with and develop an evolving data ecosystem – it will need to be adaptable to support novel use cases, focus on maximising participation, and support the growth of the digital economy.
- While Australia is already a world-leader by implementing an economy-wide data portability framework that can be ‘switched on’ across a wide range of sectors and applications, other countries around the world are also developing their own approaches to data portability which range from being regulatory or market-driven, or regulated in single sectors of the economy at a time. The development of interoperable international data portability frameworks will benefit consumers and businesses in Australia – creating more competition and consumer choice, and enabling greater access to overseas markets.
- The potential for the for CDR to play a more foundational role in transitioning the data economy from a “production of tangible value” vertical orientation (where the emphasis is on individual producers engaging consumers within their industry) to a consumer oriented “consumption of intangible value,” horizontal model (where the emphasis is on consumers seeking value across multiple producers in different industries).

The expected benefits of increased digitalisation to the Australian economy have been estimated to be as much as up to \$90 billion,⁹ creating up to 250,000 new jobs by 2025. Estimates also suggest that Australia vaulted five years forward in consumer and business digital adoption in around two months, and almost 9 in 10 Australian businesses adopted new technologies due to the COVID-19 pandemic.¹⁰ This rapid shift towards a data economy has the potential to fundamentally alter the way Australians live, such as how we conduct business, study, shop, and perform everyday tasks, driving increased demand and greater expectations from consumers for services to be seamless and online. The potential impacts of the CDR can be even greater in an environment of accelerated digitalisation.

Given this future potential of the CDR, there is also a range of broader considerations that the Review seeks views on to ensure that the CDR is set up for future success and delivers on anticipated outcomes. These considerations include:

- How the framework supports opportunities for innovation, including supporting expansion to complementary datasets that support a broader range of use consumer cases.
- How existing privacy safeguards balance the risk of new and expanded datasets being included in the CDR and continue to provide the appropriate level of consumer protection and ensure consumer confidence in the CDR scheme. Whether current settings support a data holder-agnostic approach to expansion that brings in data held by businesses and government as appropriate.
- Whether there are any potential barriers to entry and innovation under the existing framework.

⁹ Refer to Telstra’s *Embracing the Digital Economy in Australia* report, <https://www.telstra.com.au/business-enterprise/news-research/research/the-digital-economy-report>

¹⁰ McKinsey (2020) *The COVID-19 recovery will be digital: A plan for the first 90 days*, <https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/the-covid-19-recoverywill-be-digital-a-plan-for-the-first-90-days>

- Whether the statutory framework supports an agile and responsive implementation of CDR, with flexibility to respond to new technology developments and consumer expectations.
- Whether the framework is set up to support the evolution of the CDR from its implementation phase towards an operation and maintenance phase in a maturing data market.
- Whether there are other ways that the CDR can play a role in supporting Australia as a leading digital economy.
- Whether the CDR is the appropriate mechanism to deliver the broad range of potential benefits set out above, and how well-placed is CDR to underpin or drive these types of broad economic benefits and create better value for consumers.

These issues, along with the transformational changes expected through action and payment initiation, set the stage for a CDR to expand in ways not contemplated when the Statutory Framework was established. This review will consider these developments and the suitability of the existing framework to enable the CDR to reach its potential.

Key consultation points for discussion

The Government response to the *Inquiry into the Future Directions of the CDR*, and the announcement of the CDR's expansion to Open Finance, illustrate how the economy-wide expansion of the CDR will broaden CDR coverage across new sectors and data sets, and deepen CDR functionality through action initiation and other reforms.

The Review invites interested parties to make submissions on any or all issues raised by the Terms of Reference. The following sections outline the key areas of interest for the Review in the preparation of its final report.

Do the objects of Part IVD of the Act support the economy-wide expansion of the CDR

Developments in CDR policy and the data economy more broadly point to the potential for the CDR to function as the 'central nervous system' of Australia's data economy and support use-cases beyond simple comparisons within a single industry. To realise this objective, the Review seeks input on whether the objects of Part IVD of the Act unintentionally narrow the focus and purpose of the CDR, restricting its ability to be agile and responsive to support Australia's growing data economy. For example, do the objects need to be more flexible to allow for data greater portability beyond the consumer and expand the concept of 'sectors', allowing for greater potential use cases?

The CDR is in a nascent stage, with economy-wide implementation under development. It is timely for this Review to consider how anticipated further CDR developments align with the CDR legislative framework and whether the objects¹¹ of Part IVD of the Act remain fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR.

Question One

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

¹¹ For the objects, refer: s 56AA, Part IVD, *Competition and Consumer Act 2010*.

Future implementation of the CDR

This review will consider whether the existing assessment, designation, rule-making and standards-setting statutory requirements set out in Part IVD of the Act are fit-for-purpose, agile and responsive to support the future implementation of the CDR as it expands into new sectors and datasets – including bringing-in government-held data with consumer consent.

To ensure the expansion of the CDR is conducive to developing a thriving data ecosystem it is important that the statutory framework continues to support the CDR as it evolves from a sector-by-sector approach to implementation of targeted datasets across multiple sectors that will require a more agile, flexible, and use-case driven approach. This will require CDR to operate at the speed of its environment, facilitate a more agile CDR expansion across new data sets and sectors, and support the deepening of CDR functionality with action and payment initiation.

Views are sought to identify any potential barriers to entry and innovation under the existing framework, and how existing settings balance the promotion of innovation with maintaining an appropriate level privacy and security obligations. Existing barriers or issues in the designation, rule-making and standards-setting legislation should also be considered, such as whether the current designation process can be optimised to allow the CDR to be implemented in a more agile way to bring benefits to consumers sooner.

Question Two

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

Development of CDR-powered products and services

As the CDR expands across new sectors and datasets, and deepens in functionality through action and payment initiation, there will be further scope for the CDR to spur the creation of transformative products and services for consumers. These changes have the potential to improve the lives of Australians by further removing the hassle out of life and business administration. Action and payment initiation, for example, could enable individuals to initiate payments from a centralised platform, automate the process to update new details when moving to a new house, improve investment management, and create services akin to a digital concierge.

Reflecting on the purpose of the CDR as well as recent developments, the Review seeks to examine whether the current CDR regulatory settings remain sufficient and appropriate to enable new CDR-powered products and services that benefit consumers. The Review will consider whether businesses are appropriately incentivised to develop these products, whether these products meet consumers expectations, and how the CDR legislation balances the objective of enabling innovation with the CDR's privacy thresholds and security settings. It also seeks views on any potential barriers to innovation and competition.

Further information about the CDR Privacy Safeguards is included at **Attachment A**.

Question Three

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

Direct to consumer data sharing

A core intent of CDR is to give consumers greater access to and control over their data, in a safe, secure, and efficient way. Part IVD of the Act empowers the Minister to make rules requiring data holders to share relevant CDR data directly with consumers.¹²

The CDR Rules currently specify that data shared directly with consumers must be provided in human-readable form. It is possible to extend the CDR Rules to support the sharing of consumer data in machine readable form. Providing data directly to consumers machine-readable form raises questions for the Review about the core policy outcomes and success measures for the CDR, including the balance between consumer protection and empowerment objectives.

This review is seeking input on whether Part IVD of the Act should be revised with respect to direct-to-consumer data sharing. Relevant considerations might include whether direct to consumer sharing should occur in human or machine-readable formats, how to balance consumer access with innovation and security/privacy risks, how to minimise the burden data holders, and how direct to consumer sharing could potentially enable sensitive data to be shared outside the system. Consideration should be given to what opportunities and risks this poses to the consumer, businesses, data holders and ADRs.

Question Four

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

Other potential changes

The *Digital Economy Strategy* and supporting initiatives such as the *Australian Data Strategy*, highlight the integral nature of the CDR to the Australian economy, while the Government response to the *Inquiry into the Future Directions of the Consumer Data Right* and other recent processes such as the *CDR Strategic Assessment* provide clear guideposts for the potential future direction of the CDR and beyond as we transform our economy to a digital economy. The digital and data landscape is constantly moving, making it difficult to predict what the future might hold. To remain faithful to its original intent of providing benefit to Australian consumers, the CDR will need to have the flexibility and adaptability to harness opportunities and manage the risks of an evolving data economy.

The Review also seeks submissions to explore whether further changes to Part IVD of the Act are required to ensure the CDR is flexible and forward facing to harness potential opportunities, address risks, or remove barriers to achieve its policy aims and delivery of its functions. This includes taking into consideration any developments in related legislation, economic and regulatory changes, international developments and analysis of the operation of Part IVD to date.

Question Five

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

¹² Sections 56BA, 56BB, and subparagraph 56BC(1)(a)(ii) of the Act enable Rules requiring the disclosure of CDR data to the CDR consumer by a CDR participant for use as the CDR consumer sees fit.

Attachment A



Consumer Data Right Framework Overview

What is the Consumer Data Right?

The CDR is a significant, economy-wide reform that empowers consumers to benefit from the data Australian businesses hold about them, ultimately strengthening innovation, competition and productivity.

The CDR is a fundamental right for Australian consumers and businesses to have power over data generated about them, to share and extract value from this data and help access the many benefits of progress in digital infrastructure and capability.

The benefit to consumers is that, by consenting to sharing their data with accredited and trusted third parties, they can access better-value and personalised products and services, financial management, and budgeting applications, to name just a few.

The CDR provides the core infrastructure to support a data-driven economy, which is based on transactions in value (including data) between consumers, businesses and government. When data is exchanged within the CDR framework, it puts consumers in the driver's seat because it is them, not the businesses that hold their data, who draw value from their activities and transactions.

An economy-wide CDR is a key pillar of the Government's \$1.2 billion Digital Economy Strategy - the roadmap for Australia and Australians to become a leading digital economy and society by 2030.

The potential benefits of digitising the Australian economy have been estimated at \$315 billion over the next decade, which will benefit all aspects of Australian society. The CDR is a key component of this.

Who is involved?

The Treasury leads CDR policy, including development of rules and advice to Government on which sectors the CDR should apply to in the future. Senator Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy, is the responsible Minister.

Treasury works closely with the [Australian Competition and Consumer Commission \(ACCC\)](#), which is responsible for the accreditation process, including managing the Consumer Data Right Register, and ensures providers are complying with the Rules and takes enforcement action where necessary; and the [Office of the Australian Information Commission \(OAIC\)](#), which regulates privacy and confidentiality under the CDR, handles complaints and notifications of eligible data breaches relating to CDR data. The [Data Standards Body](#) develops the technical and consumer experience standards, which are made by the Data Standards Chair.

At each stage of the CDR's development, there have been public consultations, just like this one. Feedback from industry stakeholders and community representatives has helped shape the way the CDR works.

What is the process for CDR sectoral assessments?

The Minister may designate a sector of the Australian economy to be subject to the CDR under section 56AC of the Competition and Consumer Act 2010 (the Act). A sector is designated by legislative instrument, which specifies the classes of information (data) designated for the purposes of the CDR and the class or classes of persons who hold the designated information (data holders).

The Act provides that, before a sector can be designated, certain matters under section 56AD(1) (collectively, the statutory factors) must be considered by the Minister. These include:

- the interests of consumers
- promoting competition
- the efficiency of relevant markets
- promoting data-driven innovation
- the privacy or confidentiality of consumers' information
- any intellectual property in the information
- the public interest, and
- the likely regulatory impact of designation.

The Act also requires that, before designating a sector, the Minister must be satisfied that the Secretary of the Department (the Treasury) has arranged for consultation and analysis about designation and published a report about that analysis and consultation. As part of its consultation, the Treasury is required to consult the Australian Competition and Consumer Commission (ACCC), the Office of the Australian Information Commissioner (OAIC), and the primary regulator of the relevant sector (section 56AE(1)(c)). Making a designation instrument cannot occur until 60 days after the publication of the report. Before making a designation instrument, the Minister must also consult the OAIC about the likely effect of the instrument on the privacy and confidentiality of consumers' information (section 56AD(3)).

What happens after designation?

A designation instrument specifies the parameters for classes of information that may be shared under the CDR in a particular sector, as well as who is required to share it. Once a sector has been designated, CDR rules and standards for that sector can be made in accordance with statutory processes, including extensive consultation requirements.

Designation involves specifying ‘classes of information’ or data to be designated but designating a sector does not in itself impose substantive obligations. Rather, the requirement to disclose particular data emanates from the CDR rules, which establish what is ‘required’ CDR data that must be shared in response to a valid request, as well as what information data holders are ‘authorised’ to share on a voluntary basis.

The rules have been developed to apply universally across sectors to the extent possible, however, sector-specific provisions and modifications are catered for in sector-specific schedules. Once designation of a sector occurs, sector-specific issues (for example, external dispute resolution arrangements specific to that sector) are considered, as well as the development of sector-specific data standards.

Which sectors has the CDR been rolled out to?

The CDR framework has been designed to apply to the whole Australian economy and, to date, has been activated sector by sector: starting with banking, then energy, and then telecommunications.

The CDR was first implemented in banking in July 2019 with product reference data-sharing by the four major banks. Since 1 February 2022, all banks have been required to share product and consumer data.

Sharing energy data will start from October 2022, beginning with product data to provide consumers with better information about energy products and service offerings so as to support more detailed comparison services, followed by consumer data.

With the Minister having formally extended the CDR to the telecommunications sector on 24 January 2022, Treasury will commence consultations with industry and government stakeholders on the specific datasets to be shared, as well as the implementation timeframe.

Changes made in October 2021 to support increased participation in the system also expanded the scope of who can access CDR data. Those changes empower consumers to share their data easily and securely with certain trusted professional advisers, including their accountant, tax agent, financial counsellor, financial adviser or mortgage broker. They also provide new pathways for industry participation by allowing ACCC-accredited CDR participants to sponsor other parties to become accredited or allow them to operate as their representative.

What are the privacy and confidentiality protections under the CDR?

The CDR legislative framework has in-built privacy and security protections, including the 13 Privacy Safeguards under the *Competition and Consumer Act 2010*, as well as rules that relate to the privacy and confidentiality of CDR data. The Privacy Safeguards apply to consumer data and set out privacy rights for consumers and obligations for participants (such as data holders, who disclose CDR data, and ADRs, who collect and use CDR data). The Privacy Safeguards and privacy and confidentiality related rules include:

- requirements for obtaining informed consent to collect, use and disclose CDR data (including providing CDR consumers with control over the types or subsets of CDR data that is shared, to whom and for what purpose)
- obligations around the quality and integrity of consumer data
- obligations for the security of CDR data (including in relation to when CDR data must be deleted or de-identified and how), and
- a data minimisation principle.

In addition, under the framework, parties that can collect CDR data from data holders (and then use that data) must be accredited. Accreditation indicates that a party has met the strict accreditation criteria and makes that party legally responsible for their use and disclosure of CDR data.

The Data Recipient Accreditor (currently the ACCC) can accredit persons if they meet criteria regarding insurance, being a fit and proper person, information security, and appropriate internal and external dispute resolution processes. The conduct of ADRs (as well as data holders) is also overseen by the ACCC and the OAIC. In particular, the OAIC is responsible for enforcing the Privacy Safeguards and consumer data rules that relate to those safeguards or to the privacy or confidentiality of CDR data, and provides complaint-handling for these matters.

By providing a secure framework to share data, the CDR provides a greater level of privacy protection and security to consumers than is afforded by other data-sharing methods that are currently used outside the CDR. For example, the CDR is a safer alternative to screen-scraping as it often requires consumers to disclose their username and password to a third party to receive services.

For more information about the Consumer Data Right, visit cdr.gov.au