

Addressed to:  
Future Directions Unit  
Consumer Data and Digital Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam

The Australian and New Zealand chapter of Financial Data and Technology Association welcomes the opportunity to comment on the Treasury consultation for draft legislation to enable action initiation in the Consumer Data Right (CDR) regime.

**About FDATA ANZ**

The Financial Data and Technology Association is the not-for-profit industry association leading the campaign for Open Finance and Open Data across many markets. We operate globally across jurisdictions with our focus in Australia and New Zealand dedicated to trans-tasman learning and future proofing the success of the CDR ecosystem.

In this submission we provide 2 recommendations that relate to the draft legislation to enable action initiation which also have implications to the rollout of CDR more generally. Along with additional commentary related to this consultation that needs open and inclusive policy discussion.

**Summary of key recommendations**

1. To realise the benefits of action initiation and learn-by-doing within CDR the Government should openly encourage and support industry experimentation and open innovation challenges as a driver of both shared public and private sector learning and CDR adoption.
2. To ensure action initiation does not compromise the aim of giving consumers meaningful control of their data the Government should devote resources to explore the desirability, viability and feasibility of consent aggregation mechanisms and adaptations to the Data Holder selection steps in the consent flow.

## Support industry experimentation on general action initiation

Given we have existing payment rails in place with NPP and Payto, focusing on payment initiation within CDR will be an unintended distraction for those in the payments industry. General actions like account switching and/or opening and e-invoicing should be explored first or in parallel. The full benefits of larger scope data sets enabling a fuller picture of consumers and SMEs financial position will come when they can take action on improving it, like switching providers for a better deal. Such as banks they have accounts with or lenders that they do not have the optimal deal with for their circumstances. Comparison sites can use the data to show a better deal but the effort of switching is still a barrier. For example, the entire refinancing process for a mortgage can take anywhere from two to six weeks from start to finish, depending on the complexity of the loan and the lenders involved. This process is extremely stressful and is amplified with the continued stress associated with the current rises in cost of living, interest rates and inflation.

The timeline for general action initiation with payments initiation being flagged as first priority means that account switching will be delayed for some time. This impacts the demand side of the market and adoption of CDR propositions. This results in Australians not getting the full benefits that they could if industry was better able to do the job it is good at which is business model and technology innovation.

In the UK, the Open Up Challenge<sup>1</sup> done with NESTA and OBIE was a good way to accelerate innovation and demand side participation of Open Banking in the market. This approach was recently recommended in the Report into the Statutory Review of the Consumer Data Right<sup>2</sup>. Working on something similar and even starting with the Government openly supporting industry experimentation and communicating this to the market signals that the Government is clearly focused on and supportive of innovation. This reinforces the transition to a more facilitative role of Government in CDR, enhances shared learning between the public and private sector, reduces ongoing cost to the public service in ongoing changes to rules, standards and guidelines and supports direction towards a more effective living framework for the evolution of CDR<sup>3</sup>.

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<sup>1</sup> See <https://www.nesta.org.uk/project/open-challenge/>

<sup>2</sup> See pp 39-40 of Statutory Review of the Consumer Data Right Report

<sup>3</sup> See General comments on CDR directions and action initiation on page 6

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## What to do about it:

Many FDATAANZ members have already indicated the intent to push ahead on general action initiation like account switching. The Government can support this by:

- Convening a transdisciplinary working group specifically on the development of action initiation to define the methods of and be responsible for shared public-private sector learning.
- Publishing a statement of intent openly supporting industry experimentation and framework development for general action initiation and working with industry to run challenges that incentivise innovation and shared learning.
- Developing an action plan with industry, consumer advocates, peak bodies and other ecosystem stakeholder to leverage use of existing citizen engagement<sup>4</sup> platforms already in use by the Government.
- Establishing a clear and transparent process for identifying use cases that achieve social good and that are not effectively incentivized in the market to target for ongoing innovation challenges.
- Working with ACCC, APRA, OAIC and ASIC and other regulators to better understand the regulatory changes and flexibility needed for experimentation and action initiation framework development.

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<sup>4</sup> The ACCC, Department of Health, Civil Aviation Authority and other government departments are already using a citizen engagement platform that should be looked at for appropriateness for improving consultation and moving to meaningful community engagement.  
[https://www.delib.net/citizen\\_space/resources/citizen-space-for-regulatory-consultation-process](https://www.delib.net/citizen_space/resources/citizen-space-for-regulatory-consultation-process)

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## Explore consent aggregation and adaptations to DH selection

If the object of the Act is to give consumers more meaningful control over their data, the current approach to consent needs serious attention. Having a dashboard in the data holder and recipient ends of the relationship is untenable as CDR expands and general action initiation comes online. The impact of this was explored in the Phase 2 - Stream 2: CX Workstream on Consent Management and Revocation in 2019<sup>5</sup>. A recommendation was provided in that research report to address this issue earlier rather than later. Action initiation is anticipated to draw in more participating ADRs as AAIs into the ecosystem and further designations will increase the number of data holders to an already extensive list of 100+ brands. This means the consent, authentication and authorisation flow could do with some rethinking. As more data holders come online and CDR expands the CX for selecting data holders also becomes onerous for consumers.

As with many issues that exist with the current state of the CDR ecosystem, delays to resolving this now risks systemic failure. With every new designation and now action initiation this all gets more complex. Combined with new access models, more recipient propositions will exacerbate the apathy that consumers already experience with control of their data in digital society and any agency they have in relationships with companies. Further cultivating digital resignation<sup>6</sup> that already plagues modern digital life.

Consent management is not a new thing, personal data and information management systems have been around for a decade. Adaptations and alternatives to consent have been outline by other<sup>7</sup>. Technical reference points like the Kantara Consent Receipt Specification<sup>8</sup>, Grant Management for OAuth 2.0<sup>9</sup> and Verifiable Credentials<sup>10</sup> are there.

The design and technical constraints are solvable, but political will and the optimal policy setting is needed.

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<sup>5</sup>See <https://consumerdatastandards.gov.au/sites/consumerdatastandards.gov.au/files/uploads/2019/07/Phase-2-CX--Stream-2--Manage-and-revoke.pdf>

<sup>6</sup> See N. Draper and J. Turow, 'The corporate cultivation of digital resignation', (2019) New Media & Society <https://journals.sagepub.com/doi/abs/10.1177/1461444819833331>

<sup>7</sup> See L. LeVasseur and E. Maler, 'Beyond Consent: A Right-to-Use License for Mutual Agency' (2019) <https://turing.kantarainitiative.org/pipermail/wg-uma/attachments/20191203/602621a7/attachment-0001.pdf>

<sup>8</sup> See <https://kantarainitiative.org/download/7902/>

<sup>9</sup> See <https://openid.net/specs/fapi-grant-management-01.html>

<sup>10</sup> See <https://www.w3.org/TR/vc-data-model/>

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## What to do about it:

Addressing this design issue now mitigates the risk of it contributing to systemic failure of the regime. The Government can support this by:

- Convening a transdisciplinary working group specifically focused on exploring the desirability, viability and feasibility of consent aggregation and ways to implement this change in the CDR ecosystem.
- Providing for and expanding resources to the CX and Technical teams in the DSB to explore openly with industry and subject matter experts from across the globe.
- Publishing a design paper on the findings and scheduling a series of industry and community engagement workshops to define a pathway to piloting a new model for initial consent, consent management and revocation.

## General comments on CDR directions and action initiation

There are systemic issues that are unintentionally designed into CDR that are not being addressed. This ranges from a lack of focus on the demand side of the market, costs of compliance, differing needs for SMEs, the quality of data, the lack of a monitoring mechanism to understand ecosystem performance and progress, and the exclusion of industry voices that are left out of the design process due to the existing methods of community and industry consultation. This was highlighted in the CDR Statutory Review Report indicating the challenges many in the ecosystem have in meaningfully contributing to the consultations on CDR rules, standards and guidelines<sup>11</sup>.

The previous Government sectoral assessment document highlights the end state and the benefits that broader Open Finance would bring but ignores the reconstruction of many pieces of CDR infrastructure that are currently in place. The reporting, the performance metrics, the visibility of issues, the resolution timeframes, availability of compliant endpoints and the challenges with the current consultation model amongst many others. These need resolving before we add more stuff on top of what is already an overly complex ecosystem.

Every new designation to increase the supply side of data is seen as a positive. With action initiation this is much the same and the uncertainties abound. But each addition does not equate to increased utility, propositions and adoption and only amplifies the existing problems in the current ecosystem. The cost to change technology and refactor software, change rules, standards and guidelines increases with time but we must not let sunk cost fallacies get in the way of future proofing the long term success of CDR in Australia.

A great deal of the issues that arise now are commercial and industry issues that are not entirely visible from those in the governing bodies which contributes to shortsighted policy positioning and unnecessary rules complexity.

FDATA ANZ members want to make sure this works. They want to make sure this does not disrupt existing business operations. They want to make sure benefits come to consumers as quickly and safely as possible but there needs to be more time for meaningful engagement to figure this out. There's a real opportunity for industry and digital service providers in particular to be better embedded in the design phases of CDR. The current propose, submit, revise, implement, propose, revise cycle is of huge cost to both the public and private sectors.

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<sup>11</sup> See pp 23-25 of Statutory Review of the Consumer Data Right Report

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A better way forward to improve this model is possible. This should be focused on bringing more meaningful conversations to the table as CDR is being designed. Further supporting the defining the vision and end goals of CDR then working together on how we can work back from it.

The current prescriptive approach that has been the status quo of CDR since inception should be reviewed with a transition to a more facilitative approach explored with ecosystem stakeholders. This should be underpinned with clear intent to move beyond committees and consultation to meaningful community engagement and codesign.

This is the crux of the challenge for CDR in developing a ‘living framework’ that is dynamic and “sufficiently clear, yet not overly detailed, and appropriately favours experimentation over heavy-handed ex ante regulation”<sup>12</sup>.

The world is watching CDR in Australia and the time to create the conditions for systemic change and commence policy setting for this is now.

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<sup>12</sup> See pp 39-40 RP Buckley, N Jevglevskaia and S Farrell ‘Australia’s Data-Sharing Regime: Six Lessons for the World’ (2021) King’s Law Journal (forthcoming)

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### Final note:

FDATA supports and encourages a CDR that gives consumers and small businesses meaningful control over their data, provides for more informed choices, catalyses industry innovation and supports competition in the Australian economy.

The Consumer Data Right is a pivotal opportunity to promote digital transformation, enhance Australia's economy and improve the lives of everyday Australians for generations to come.

We commend the Government and industry's continued efforts to do their best and deliver a fit-for-purpose, trustworthy and outcome-focused CDR. While also acknowledging how far we have come in the past years, accepting what is and also never losing sight of what should be.

Please do not hesitate to contact me should you have any questions or would like to discuss how FDATA can support on delivering on these recommendations.

Warm regards,



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