



24 October 2022

Future Directions Unit
Consumer Data and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email
data@treasury.gov.au

Dear Sir / Madam

RE: **Consumer Data Right – Exposure draft legislation to enable action initiation – consultation**

Thank you for the opportunity to respond to the consultation regarding the exposure draft *Treasury Laws Amendment (Measures for Consultation) Bill 2022* which enables action initiation in the Consumer Data Right (CDR) (the **Draft Legislation**).

1. About Mastercard

Mastercard is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses and other organisations worldwide, enabling them to use electronic forms of payment instead of cash and cheques. We make payments easier and more efficient by providing a wide range of payment solutions and services using our family of well-known and trusted brands, including Mastercard®, Maestro® and Cirrus®. We operate a multi-rail payments network that provides choice and flexibility for consumers and merchants.

At Mastercard, our key strategic priorities are:

1. **Expand in payments.** We continue to focus on expanding upon our core payments network to enable payment flows for consumers, businesses, governments and others, providing them with choice and flexibility to transact across multiple payment rails.
2. **Extend our services.** Our services drive value for our customers and the broader payments ecosystem. We continue to do that as well as diversify our business, by extending our services, which include cyber and intelligence solutions, insights and analytics, test and learn, consulting, managed services, loyalty, processing and payment gateway solutions for e-commerce merchants.
3. **Embrace new network opportunities.** We are building and managing new adjacent network capabilities to power commerce, creating new opportunities to develop and embed services.

Through our third strategic priority, we are focused on opportunities to enable Open Banking with everyday consumers. We are inspired by the vision of empowering consumers with control of their data so that they have more choice, at a greater convenience and with trust in the ecosystem, to

switch products, make better decisions and ultimately benefit more tangibly from the digital revolution. We currently do this by providing our Fintech and financial institution partners with Open Banking products and services that enable them to reliably access, transmit and manage consumer data to meaningfully enhance their customer experience and win in a rapidly changing market at a global scale. Mastercard has also expanded globally into new network opportunities which include infrastructure and overlays relating to account-to-account payments, digital identity, data and open banking. We operate in markets that are both regulated and unregulated.

We see a future where individuals and organisations are empowered to access and share their data across multiple applications and services to improve their ability to make smarter decisions. We believe that secure data access, high data quality, and intelligent data enrichment are fundamental to unlocking the value of Open Banking both with businesses and their customers.

2. Consultation response

Mastercard welcomes the expansion of the CDR to enable action initiation. The declaration of specific actions that can be initiated using the CDR represents a natural evolution of the regime and will serve as a key catalyst for its continued growth.

We offer the following comments in relation to the Draft Legislation.

Accreditation requirements

The Draft Legislation confirms that all Accredited Action Initiators (**AAIs**) must also be accredited to receive data under the CDR (and that if an accredited person becomes an AAI without already being an Accredited Data Recipient (**ADR**), they will become an ADR if they receive CDR data for the purpose of preparing an instruction for action initiation).

However, the Draft Legislation does not provide any concrete indication of the extent of any additional accreditation requirements prospective action initiators would need to meet, over and above what is already required to become an ADR under the existing regime. Mastercard recommends that when designing the requirements for different levels of accreditation, the Minister should have regard to the principle of proportionality. We note the robust application process which accredited persons today are required to complete, and consider that the extent of any new requirements that an accredited person will have to satisfy in order to have their accreditation expanded to include action initiation should be minimal. Moving between different levels of accreditation should involve a streamlined process that does not require a fresh "application" for accreditation.

Requirement on AAIs to act efficiently, honestly and fairly

Mastercard notes the proposal for AAIs to act "efficiently, honestly and fairly" when providing action initiation services to CDR consumers. While we understand the rationale behind imposing an obligation of this nature, Mastercard anticipates that many AAIs will not hold Australian Financial Services Licences and will therefore not be familiar with this obligation, how it should be interpreted and how it should be applied to their business.

This obligation is a fundamental principle of Australian financial services regulation and is the subject of both detailed regulatory guidance and settled case law. It would therefore be helpful for the legislation (and any accompanying explanatory material) to include further detail on how this obligation should be understood in the context of the CDR, and the extent to which existing regulatory guidance as it relates to the obligation in s 912A(1)(a) *Corporations Act 2001* (Cth) will be relevant to the discharge of this obligation by AAIs.

Non-discrimination principle

Mastercard agrees with the proposed non-discrimination principle. Ensuring that Action Service Providers (**ASPs**) treat instructions received from an AAI in the same manner as instructions received directly from a consumer is a fundamental and necessary concept to protect and foster



the action initiation ecosystem. We have experienced this firsthand in Europe where, despite similar provisions under PSD2, including an obligation on banks to not impose obstacles to the provision of payment initiation services, many payment initiation service providers still face issues such as additional and unnecessary checks of the consent given by the consumer, difficulties in obtaining information on payment execution following initiation, and problems with account selection and obtaining a list of the consumer's accounts. It is also of course essential that the APIs made available by ASPs are sufficiently well-functioning and meet relevant performance and availability standards.

Mastercard also agrees with the proposal that, when performing CDR actions, ASPs be prohibited from imposing charges higher than their ordinary fees. However, we would urge Treasury and the ACCC to carefully consider the nature and amount of any fees that might be permitted in the Rules for processing CDR action instructions. These fees should be developed in consultation with industry in order to protect the viability of key business use cases in this segment – particularly account to account payments.

Liability of participants

Mastercard considers that, as part of the declaration process for specified action types, the Rules will need to give careful consideration to the liability framework that applies to each action initiation participant, for example if an error occurs or a loss arises during the instruction layer. Depending upon the action type, there may need to be specific rules developed to deal with common scenarios, such as reversals or refunds in a payment initiation context. CDR consumers will need to be confident that action initiation via the CDR can be carried out safely and securely, with appropriate protections in place to mitigate the risk of fraud and other losses.

Streamlined consumer experience

Finally, while not an immediate concern of the Draft Legislation, Mastercard wishes to take this opportunity to stress the importance of a streamlined consumer experience when it comes to developing standards and CX guidelines for action initiation. This becomes critically important in a payment initiation use case – a cumbersome consent → authenticate → authorise process involving multiple, detailed screens will not allow AAls to complete with streamlined card-based payment processes – instead this will act as a key barrier to meaningful customer adoption. In our experience, garnered in both Europe and the United States, additional steps in the user journey has a material impact on conversion rates and must therefore be avoided. In light of this, it is essential that these standards and guidelines are developed in consultation with industry, and with an overall goal of ensuring they are as succinct and consumer-friendly as possible.

3. Further discussion

Mastercard appreciates the opportunity to comment on the Draft Legislation. We would be pleased to meet with Treasury to discuss the contents of our submission further.

If you would like to discuss the contents of our submission, or require additional information, Cassandra Smith, Director Public Policy, can be contacted via email at

Yours sincerely,

Surin Fernando
Senior Vice President
Head of Customer Solutions Centre

