



TELSTRA CORPORATION LIMITED

Response to Consumer Data Right – Exposure draft legislation to enable action initiation

Public version

FINAL

24 October 2022



1 Introduction

The CDR regime will enable the sharing of data between businesses and customers in a safe and secure way, and we support its application across the economy. We welcome Treasury's approach to designating new action types, where action types are subject to Ministerial Declaration and consultation, and we look forward to engaging with Treasury at the appropriate time on any 'action types' that may pertain to our business. Ahead of that engagement we offer the following preliminary comments for consideration.

Action Initiation (AI) may drive important transactional benefits for banking and energy consumers, however these benefits will not be equal across other industries. Our submission focusses on its introduction to the telco sector, which in our view would complicate CDR implementation and could harm the very efficient processes the telecommunications sector has developed for customers, including the quick switching of customers between providers. AI should only be considered for the telecommunications sector when the CDR implementation is at a mature stage and when (and if) consumer demand supports its introduction.

In addition, we consider that Accredited Action Initiators (who will undertake actions on behalf of the consumer with consent) are analogous to the operation of Secondary Users under the CDR.¹ The Draft Telco Rules have sought to exclude Secondary Users for data sharing purposes with Treasury, noting that the concept is not made out.² However, extending CDR to AI, will seemingly reintroduce the concept of 'Secondary User' to telco for declared action types. In our view, this will create complexity, risk and cost for users and industry alike and we consider Treasury will need to work with industry to adopt very clear rules and guidelines to ensure data is safely protected in all circumstances. We discuss our concerns specifically in Section 5 and 6.

2 The use cases in telco are limited at this time.

The use cases currently envisaged by Treasury will not have broad application in the telco sector. Therefore, we are concerned by the change in approach being adopted by Treasury in moving away from a sector approach, to a more generalised approach relating to action types across the CDR.³ Each of the sectors is distinctly different, and we therefore consider Treasury needs to take a nuanced approach to the introduction of new action types and consider each on a sector-by-sector basis. We note such an approach is consistent with the Farrell review which recommended that AI be included after a "sectoral assessment" which would look at sector-specific regulatory issues.⁴

a. Switching services

As we have previously discussed, telecommunications customers have ready access to transparent information to facilitate tariff comparison via Critical Information Summaries and can switch providers quickly.⁵ For example, the Mobile Number Portability Code which sets out the requirements for mobile porting stipulates that 90% of ports, where a customer moves phone numbers from one service provider to another, must occur within 3 hours.

In many instances, introducing AI into this well understood transaction process may unnecessarily delay the switching of services for consumers by adding additional complexity (and cost) for limited benefit.

b. Updating customer data

Care needs to be taken when extending CDR functionality in this regard. As previously described, law enforcement agencies rely heavily on telecommunications data (including customer details and usage

¹ Competition and Consumer (Consumer Data Right) Rules 2020. See Telstra response, Draft Telco Rules, 17 October 2022, Section 7.3

² Para 11, Explanatory Memorandum, Draft Telco Rules

³ [Summary of proposed changes - Exposure draft legislation to enable action initiation in the Consumer Data Right \(treasury.gov.au\)](#), pg. 5

⁴ [Government Response to the Inquiry into Future Directions for the Consumer Data Right \(treasury.gov.au\)](#), Recommendation 4.3

⁵ "It is not Telstra's experience that customers in the telecommunications sector currently suffer behavioural and regulatory barriers to safe, convenient and efficient switching." Telstra submission, Future Directions Consultation 2020.



data) for their investigations. If third parties were able to change or add to customer data, this could have unforeseen impacts on those agencies ability to rely on that altered data (especially from an evidentiary perspective in court).

3 Action Initiation in many cases will simply duplicate many of the carriers' own apps and existing processes

For example, using the My Telstra App customers can already update and view all services, move services, make payments and update personal details. Many other telcos also have their own unique apps with similar functionality. Given this, it is unclear why a CDR regime is needed to duplicate many of the services already offered by telecommunications providers.

4 Action Initiation should only be introduced once telco reaches maturity

It should be recognised that AI also introduces an added layer of complexity (including relating to security of data and privacy of customer) to the CDR Regime. These are discussed in greater detail in the Comms Alliance submission.⁶

At the time of writing this submission, Treasury is still consulting on the draft telco rules. We consider further enhancements to the CDR regime (such as that proposed by AI) should only be introduced in a designated sector once that sector reaches a level of maturity and only once use cases are appropriately proven.⁷ This is consistent with the recommendations of the Farrell review which noted a relevant factor being the “digital maturity” of the sector.⁸

5 Introducing action initiation creates risks for customers

Telstra offers the ability for the Primary Account Owner on an account to nominate one or more Authorised Representatives to an account.⁹ Importantly, we provide different levels of authorisation, including limited authority, full authority, and third-party authority. We understand that the introduction of Accredited Action Initiators (AAI) will also facilitate multi-level authorisation, where the CDR consumer will have the ability to authorise different categories of actions such as updating account information, initiating transactions (e.g., payments), and opening, closing or transferring an account to a different service provider. In this regard, the introduction of AAI may superficially appear to be the same as Authorised Representatives.

It is important to note the conversation between the service provider and the customer is where we gather important information that a customer might be in circumstances of hardship, vulnerable, or might be a risk to the network (e.g. sim farms, sim swap). Introducing AAIs into this process risks overriding/bypassing the existing protections consumers can get by engaging directly with telecommunications service providers. Where an AAI is authorised to operate on behalf of a consumer, this important information can be missed, which may put consumers at unnecessary risk. For example, if an AAI is authorised to transfer a consumer's account to another service provider (e.g., because the AAI has found a better deal), how will the gaining service provider learn of details such as Priority Assist, or other important details in relation to that customer's financial or vulnerability wellbeing?

To provide a second example, while we appreciate that an AAI must be accredited by the ACCC, if hypothetically a nefarious actor is able to obtain accreditation, will mechanisms such as the 100-point credit check or sim-swap fraud prevention still operate to limit the risk of the nefarious actor soliciting consent from vulnerable customers looking for a better deal? This is even more imperative given that under an AI model, the scope of who can be a CDR customer is broader than is currently proposed

⁶ Comms Alliance, Consumer Data Right – exposure draft legislation to enable action initiation, 24 October 2022

⁷ Telstra response, Draft Telco Rules, 17 October 2022, “*Keeping customer information safe and secure is of the utmost importance to Telstra. With the heightened awareness on breaches and security, and the potential for complex structures involving third-party outsourced service providers (OSP), we are strongly of the view that consumers need an opportunity to become familiar with whom their data may be transferred to in a gradual approach. Similarly, the telecommunications service providers need an approach that allows adequate time to develop, test and refine their experience (and the experience of their customers) through multiple phases, each allowing sufficient time for industry to embed the fundamentals and ensure a seamless, gradual transition to CDR.*”

⁸ [Government Response to the Inquiry into Future Directions for the Consumer Data Right \(treasury.gov.au\)](https://www.treasury.gov.au), Recommendation 4.3

⁹ See <https://www.telstra.com.au/support/account-payment/give-another-person-access-to-account>



because a person or entity can seek to have an action initiated and performed on their behalf without CDR data sharing having previously occurred or without a pre-existing relationship with a data holder.¹⁰

We appreciate the exposure draft legislation requires that before declaring any given action type, the Minister must publicly consult and that following the public consultation, CDR Rules must then be created for each action type, thereby giving industry the opportunity to raise concerns such as those raised here. We also acknowledge that the Minister must have regard to “*the interests of consumers, efficiency of relevant markets; promoting competition and data driven innovation*”,¹¹ and that to some extent, this could be expected to obligate the Minister to identify matters of consumer protection.

However, because Treasury’s intention is to apply action types across all sectors simultaneously, (i.e., action types are not established on a “per sector” basis), we strongly recommend the exposure draft of the legislation and the explanatory memorandum be amended to require the Minister to also consider any consumer and other protections already in place in the telecommunications sector (and banking and energy for that matter), and ensure that these protections are maintained (not circumvented) when an AAI subsequently initiates an action.

6 Privacy implications

Our recent submission to Treasury explains the complex “one to many” model employed in telco and why eligibility for CDR data sharing should be restricted to the Primary Account Holder (PAO).¹² The “one to many” model, where customers can have multiple services under their account, means that services (in many cases, mobile) will be primarily used by others who are not the PAO. While those end users will be aware that the PAO has access to their general usage information as the bill payer, they are unlikely to be aware that the PAO may have set up other authorities on their account – and in the case of AI - an AAI that can make payments, switch services, update customer data or other relevant use cases that may impact their services.

We request Treasury deal with these types of concerns under an AI model in telco specifically given the breadth of data / number of users that can be impacted in any given transaction, otherwise we are concerned that the privacy and security of customer data has the potential to be compromised.

More generally, we also consider the Attorney-General’s Department’s broad ranging Privacy Act Review will have important implications for organisations subject to the Privacy Act as well as the CDR regime. We note there are significant privacy considerations that are discussed in detail in the Explanatory Materials and Privacy Impact Assessment by KPMG, but it is impossible to fully consider their suitability until the outcomes of the Privacy Act Review are established. In addition, the current development of the Electronic Surveillance Act should be considered to ensure no CDR mechanisms impact security considerations. We look forward to engaging with Treasury on these matters at a future time.

¹⁰ Para 1.52 Explanatory Memorandum, Action Initiation

¹¹ Exposure Draft of Explanatory Memorandum, paragraph 1.160, third bullet point, top of p.35, although we hasten to add that this is only documented in the Explanatory Memorandum, and NOT in the primary legislation, which we consider to be an oversight.

¹² Telstra submission, CDR Rules amendments, 17 October FINAL, Section 7.3 – Secondary Users