



24 October 2022

Future Directions Unit
Consumer Data and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

By electronic mail: data@treasury.gov.au

Dear Sir/Madam,

Re: Visa's submission regarding the Consumer Data Right - Exposure draft legislation to enable action initiation

Visa welcomes the opportunity to respond to the consultation on the "Treasury Laws Amendment Bill 2022: Consumer Data Right – Implementing Action Initiation" (Draft Legislation) and the Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes" (Summary).

We appreciate the continued opportunities to collaborate with Treasury and other Australian government bodies to fulfill the objectives of the Consumer Data Right (CDR) and Open Banking¹. Visa shares Treasury's goals of enhancing the CDR for the benefit of Australia's citizens, businesses, and the broader digital economy.

¹Visa has provided written responses to the following consultations on the development of the CDR in Australia:

- July 30, 2021: Visa's submission to "Consumer Data Right Rules Amendments (Version 3)" is available online at:

<https://treasury.gov.au/sites/default/files/2021-10/visa.pdf>

- October 29, 2020: Visa's public submission to "Consumer Data Right rules expansion amendments" is available online at: <https://www.accc.gov.au/system/files/Visa%20%2829%20October%202020%29.pdf>

- July 20, 2020: Visa's public submission to "Draft rules that allow for accredited collecting third parties (intermediaries)" is available online at:

https://www.accc.gov.au/system/files/Visa%20%2820%20July%202020%29_0.pdf

- May 19, 2020: Visa's public submission to Treasury in response to the "Inquiry into the Future Direction of the Consumer Data Right" is available online at:

<https://treasury.gov.au/sites/default/files/2020-07/visa.pdf>

- February 10, 2020: Visa's public submission to "Facilitating participation of intermediaries in the CDR Regime" is available online at:

<https://www.accc.gov.au/system/files/CDR%20Rules%20-%20intermediaries%20consultation%20submission%20-%20Visa.pdf>

- March 2018: Visa's public submission to the "Review into Open Banking in Australia – Final Report" is available online at <https://treasury.gov.au/sites/default/files/2019-03/T282002-Visa.pdf>

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Visa thanks Treasury for providing continued opportunities for stakeholder collaboration. We support the department's thoughtful approach to the consultation processes, which have been fundamental in building a regulatory framework that can benefit Australian consumers, businesses, and the broader economy. Specifically, Visa supports Treasury's initiative to open public consultations before declaring the types of actions which can be initiated under the CDR. At this stage of the development of the action initiation framework, early stakeholder engagement is crucial to help Treasury navigate the complexities of the ever-evolving products and services in the open data ecosystem in Australia.

Visa has been a trusted facilitator of commerce between consumers and businesses for over six decades. We are continuing to evolve our global, open network to meet the ever-changing demands of consumers and businesses to safely and securely connect buyers and sellers to fintech developers, financial services firms and other innovative companies in the payments ecosystem.

I. Initial Considerations on the Draft Legislation

Visa welcomes Treasury's recognition of new and emerging innovative business models that may have capabilities to operate in the CDR ecosystem. We commend Treasury's and the Australian Competition and Consumer Commission's (ACCC) focus on innovation and consumer empowerment through the CDR and understand that action initiation is a significant step in the ongoing process of strengthening and deepening the CDR's functionality. As Treasury indicates in the Summary, action initiation would "expand the CDR from a data-sharing scheme to a scheme that allows consumers to act on insights they receive."²

While the Draft Legislation is currently focused on the instruction layer³ of action initiation, we note the broader and ongoing discussions in the CDR ecosystem including, for example, the recently released Statutory Review of the CDR Report⁴ (Report), which emphasises the role of payment and action initiations as game-changers for the CDR, and which are expected to drive greater participation and innovation in the scheme.⁵

II. Specific issues to consider on development of the Action Initiation CDR Framework

² Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes, page 1.

³ According to the Summary, it is the layer which comprises the activities associated with consumer sending instructions for the performance of actions. See Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes, page 6.

⁴ Treasury (2022), Statutory Review of the Consumer Data Right – Report, <https://treasury.gov.au/sites/default/files/2022-09/p2022-314513-report.pdf>

⁵ Ibid., p92

1. A flexible, principles-based approach to action initiation encourages adoption, innovation, and competition

In the Summary, Treasury states that introducing action initiation to the CDR will "unlock new business models and drive consumer benefits and digital innovation."⁶ Visa agrees that action initiation will play an important role in the expansion of the CDR and the potential benefits to consumers. To best realise these benefits, Visa encourages Treasury to take a flexible, principles-based and outcomes-driven approach to regulation and cautions against applying a prescriptive approach. Visa has observed that overly-rigid and inflexible regulations have hindered adoption and innovation of Open Banking regimes in other geographies.

While regulation played a crucial role in kick-starting Open Banking in Europe, the prescriptive nature of the regulation (e.g., no-cost Application Programming Interfaces (APIs) and strict 90-day authentication requirements) has led to the slower adoption of services. In the draft regulation, Treasury cites the United Kingdom (UK) as a success case for payment initiation.⁷ While we agree that the UK has been a forerunner in the development of Open Banking, it is important to note that the UK Government is now reviewing its regulatory regimes to promote greater consumer utilisation as the sector considers moving toward a broader 'open finance' framework. Regulators in the UK, including the Financial Conduct Authority (FCA), have recognised that while banks have been required to expose APIs, there are opportunities to further develop and grow adoption of Open Banking services, and regulatory requirements are being addressed to ensure long-term success.

Conversely, Hong Kong, Japan, Singapore, and South Korea, among other jurisdictions, have opted for a flexible approach to Open Banking, with industry driving the exposure of high-quality APIs in response to consumer demand. In Singapore, for example, the Monetary Authority of Singapore (MAS) has facilitated voluntary adoption of APIs for Open Banking by working with the Association of Banks Singapore to publish guidelines for Open Banking and APIs (the Finance-as-a-Service playbook) and also tracking adoption and use cases of open APIs. MAS has also helped launch a marketplace and sandbox environment as well as SGFinDex, which allow consumers to aggregate and share their financial data across different banks and financial service providers.

The success of the CDR and the open data ecosystem hinges on a commercially competitive environment in which new business models can develop and thrive, encouraging developers, intermediaries, and financial institutions to invest in new and innovative financial services to satisfy consumer demand.

⁶Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes, page 4.

⁷Ibid.

At this early stage of action initiation, a prescriptive approach could stifle innovation, inhibit the emergence of different business models, and may ultimately result in delayed innovation and consumer adoption. Visa supports a framework that appropriately focuses on data security, transparency, and consumer choice, as we expand upon below.

2. Consent requirements should be meaningful while ensuring appropriate flexibility

The Draft Legislation proposes that the Minister will declare new action types in the CDR and then make rules for each action type, including specific consent requirements for actions. Visa commends Treasury for its focus on consent and consumer protection. As Visa has noted to Treasury in previous consultation responses on the development of the CDR⁸, it is imperative that consumers understand what they are consenting to when they share their data. As a result, it is essential that consumers are provided clear, simple, and consistent information about their choices and how to manage their data-sharing permissions.

In line with that, Visa agrees with Finding 2.2 of the Report, which discusses the central role of consent in the CDR's realisation of informed consumer decision-making and the delivery of consumer benefits, while noting that complicated consent processes may limit participation in the CDR and contribute to "consent fatigue." Visa commends Treasury's proposal to establish parameters for consented data disclosure, and the elements required for consumer consent to be deemed valid and apt to initiate an action. However, Visa recommends that rules and standards regarding consent management should be sufficiently flexible and principles-based, to accommodate emerging business models, without deviating from key principles such as the security of consumer data and interoperability with current consent-management frameworks.

Considering our recommendation above, we encourage Treasury to adopt consent requirements for each action that are meaningful without being overly-prescriptive. This is especially important if a consumer is providing consent for more than one action – and, likewise, a provider is receiving and abiding by that consumer's consent for more than one action. Rules under which each action requires a unique set of consent requirements risk delaying development and may result in consumer confusion and duplicative processes.

Visa notes that there is a need to closely examine and reconcile the interplay between different legal frameworks which share the common goal of giving consumers control

⁸ See, for example, May 19, 2020: Visa's public submission to Treasury in response to the department's "Inquiry into the Future 'Direction of the Consumer Data Right" is available at: <https://treasury.gov.au/sites/default/files/2020-07/visa.pdf>

over their data. For example, regulators in Europe have reviewed the ways in which the differing consent requirements under the General Data Protection Regulation (GDPR) and the Open Banking regime interact and can both be satisfied. “Consent” and “explicit consent” need to be correctly understood within the separate contexts of data protection law and payments services regulation. This requires a payment service provider to put in place appropriate procedures to ensure compliance with data protection law as well as payment services regulation. In summary, a framework that delivers seamless and consent-driven access to personalised products and services will help to drive trust, innovation, and competition in the evolving CDR environment.

3. API Standards should be developed by industry to ensure that regulation supports the development of new business models or services for consumers

Trust between participants is essential to encourage consumer confidence in the CDR. In this regard, there is a role for action initiation regulation in ensuring that there is a primary focus on data security and consumer empowerment. This can be achieved through a principles- and outcomes-based regulatory framework that allows competition and innovation to thrive at all levels of the value chain.

Visa acknowledges that APIs play a paramount role in the development of the nascent action initiation CDR scheme. The Summary notes that rules and standards will be tailored to different actions.⁹ In line with this, we support common rules that will help to enable secure, efficient, consumer-permissioned data sharing among participants in the developing action initiation framework.

In principle, Visa sees value in a structure that introduces standardisation, given that common technical standards governing issues like security are important to enable interoperable systems and a frictionless consumer experience. Broad representation and active participation from industry participants in the designated sectors’ ecosystems, such as payment networks, is more likely to see the development of APIs that work universally for all participants and across multiple use cases - with an appropriate focus on the consumer experience. For example, industry should develop API standards that are interoperable, have high security standards, meet certain performance and availability requirements, and allow APIs to be commercially viable. While these common rules and standards are under development, it is important to continue allowing current methods for accessing data to propel forward movement and consumer engagement in Open Banking.

We also recommend that the CDR should take a technology neutral approach. The focus should be on the framework conditions for data access, not on the API

⁹ Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes, page 3.

technology enabling the access. Otherwise, the CDR will risk locking the industry into API specifications that will be technologically outdated in the future.

4. Interoperable standards create a level playing field across industry participants

The Summary notes that action initiation will bring several benefits to the Australian digital economy, such as the creation of a secure and standardised instruction layer linking to the broader data ecosystem.¹⁰ To realise this benefit, as Australia considers the next stage of the CDR, interoperable standards can create a level playing field across industry participants, enabling a frictionless consumer experience today and supporting scalability in the future. As discussed above, we recommend that these technical and consent standards should be industry-driven to ensure that participants possessing suitable technical skills and market experience develop a blueprint that reflects market demand, while supporting interoperability across a variety of use cases. Consistent, interoperable standards will also help incentivise the creation of new and innovative products and services, thereby supporting Treasury's goal to grow and expand the next-generation of the data-sharing ecosystem.

Visa believes that a consumer of a financial product or service should benefit from similar types of consumer protections irrespective of whether they are offered by a federally regulated financial institution, a fintech, or any other entity. We encourage Treasury to seek synergies with existing domestic frameworks, given that the type of entity providing a service should not have implications on consumer protections for Australians.

5. Accreditation requirements should be tiered, flexible and adaptable to the roles of participants in the ecosystem

The creation and success of a vibrant action initiation CDR ecosystem will depend on how straightforward it is for fintechs and developers to enter the chain and innovate. A 'one size fits all' approach to accreditation that is not adaptable to the range of goods and services that different intermediaries offer may lead unintentionally to fewer new participants and less innovation in Australia. Ultimately, a more inclusive environment will encourage more innovators to participate in the Australian ecosystem, making it more competitive, resilient, and consumer-focused.

Visa commends Treasury for noting in the Draft Legislation that consumer data rules may establish different levels of accreditation.¹¹ To that end, Visa encourages Treasury

¹⁰ Exposure Draft Legislation to Enable Action Initiation in the Consumer Data Right – Summary of Proposed Changes, page 4.

¹¹ [Exposure draft - Treasury Laws Amendment \(Measures for Consultation\) Bill 2022: Consumer Data Right – Implementing Action Initiation](#), Section 56AMC – Meaning of *accredited action initiator*, Note 1, page 10.

and the ACCC to adopt a tiered approach to accreditation, in which the level of accreditation is proportionate to the risk, scope and nature of services offered. In addition, Treasury should consider a flexible and agile approach to commercial roles (currently envisioned as 'Accredited Action Initiator' and 'Action Service Provider' in the Draft Legislation) to allow the action initiating ecosystem to develop – rather than an overly-prescriptive approach.

Given the diversity of ecosystem participants and early stages of action initiation features, the defined roles contemplated in the Draft Legislation may be overly-specific and limiting, potentially inhibiting the dynamism of innovation and lessening competition. As a result, we encourage Treasury to allow relationships among different parties in the CDR ecosystem to evolve through commercial agreements guided by consumer demand and preferences, while upholding high standards and protections for consumers.

As the action initiation CDR framework develops in a live, dynamic environment, intermediaries will seek to differentiate themselves by creating innovative goods and services, which may play different roles depending on the services provided to, and the specific commercial relationships with, third parties. In our view, the role for intermediaries should be flexible and guided by the principles of consumer consent and appropriate standards of data security.

6. Security and protection of consumer data are top priorities

As the CDR framework evolves to adopt action initiation, earning public trust to handle and use important personal data requires a commitment to privacy, security, and transparency. To that end, Visa shares Treasury's commitment to responsible data use and the secure handling of data exchange in both the instruction and action layers. Visa further commends Treasury on its initiative to ensure that Action Service Providers must only accept valid requests and may refuse actions they would not complete outside the CDR. This is an important step to properly manage fraud and ensure ecosystem security.

Visa agrees with Treasury that the proposed changes to the privacy safeguards are sensible and well aligned with the intended expansion of the CDR framework to cover action initiation. In particular, the proposed delineation between the instruction layer and the action layer should enable CDR participants to clearly distinguish between the CDR regulatory obligations (applicable to the instruction layer) and existing privacy regulations, while reducing the potential for duplicative regulation.

Finally, a level playing field will be crucial to encourage innovation and build a sustainable data sharing ecosystem in Australia. A framework that applies to all third-party action initiators regardless of size ensures that there are at least some baseline security and consent protocols applicable across the ecosystem.

Conclusion

Visa appreciates the opportunity to provide our perspectives as Australia seeks to expand the CDR framework to include action initiation. We are committed to remaining highly engaged as these developments progress and would welcome the opportunity to meet with Treasury to discuss our comments in more detail.

Yours sincerely,

(signed) Julian Potter
Group Country Manager
Australia, New Zealand & South Pacific

About Visa

Visa is one of the world's leaders in digital payments. Our mission is to connect the world through the most secure, reliable, and innovative payment network – enabling individuals, businesses, and economies to thrive. We facilitate global commerce and money movement across more than 200 countries and territories and among consumers, financial institutions, businesses, strategic partners, and government entities through innovative technologies. In Australia, Visa has offices in Sydney and Melbourne. Together with our Australian financial institutions, fintech and business clients, and our technology partners, we are committed to building a future of commerce that fosters Australian economic growth, security and innovation.

Visa continues to expand acceptance across the payments ecosystem, ensuring that every Australian can both pay and be paid in a secure and convenient way. In fact, over a five-year period, Visa invested nearly US\$9 billion in systems resilience, fraud management and cybersecurity, including tokenisation, Artificial Intelligence (AI) and blockchain-based solutions, to bring even more security to every transaction.¹² In 2021, Visa's AI-driven security helped financial institutions prevent more than AU\$354 million in fraud from impacting Australian businesses.¹³

As commerce moves rapidly online, the threat landscape is also changing and, in response, Visa released its updated Australian Security Roadmap 2021-23, given the increasing risk of cybercrime and scams facing Australian businesses and consumers. The roadmap highlights the steps that Visa is taking, together with industry, to continue securing digital payments in Australia.¹⁴

In 2016, Visa launched the Visa Developer Platform ("VDP"), transforming our proprietary technology network, VisaNet, into an open commerce platform. VDP provides simplified access to many of Visa's most in-demand products and services through an open network of Visa APIs, allowing our partners to transform great ideas into new digital commerce experiences. VDP offers over 125 APIs, enabling access to some of the most popular Visa capabilities. This provides developers with a sandbox testing environment for the development of new digital payments and commerce solutions.

¹² Visa (2022), US\$9 billion investment figure based on internal data on global technology and operations investments between FY2015-FY2019. More information is available [here](#).

¹³ Visa (2021), Visa's AI prevents more than \$350 million in fraud from disrupting Australian businesses. More information is available [here](#).

¹⁴ The Visa Security Roadmap: 2021-2023 is available [here](#).