



Submission to Treasury

Consumer Data Right rules – expansion to the telecommunications sector and other operational enhancements

October 2022



About this Submission

This document was created by FinTech Australia in consultation with its members.

In developing this submission, a roundtable was held to discuss key issues related to the draft rules.

We also acknowledge the support and contribution of Hamilton Locke to the topics explored in this submission.



Summary

The *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2022* (the Amending Rules) amend the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules) to give effect to the Government's intention to implement the CDR in the telecommunications sector and introduce operational enhancements to support business participation in the CDR by providing more choice over who business consumers can share their data with and for how long.

FinTech Australia's submission is focused on the changes designed to support greater business participation and the other operational enhancements.

We support the general approach taken by the Government to:

- reduce barriers to participation in the CDR;
- enable services to be more efficiently provided to business consumers; and
- allow business consumers to have more choice over who they can consent to share their data with.

We appreciate these changes were introduced to better facilitate participation in the CDR however we remain concerned about the complexity of the broader consumer consent process and that this will continue to jeopardise this aim. Positive consumer experience with CDR is critical to its uptake and economy-wide expansion and this can only be achieved by streamlining the consent process.

FinTech Australia members are vocal advocates for the CDR to continue expanding and we appreciate it continues to be finessed at a relatively quick pace. However, the volume of recent consultations paired with incredibly tight timeframes has resulted in members experiencing some 'consultation fatigue'. Many of FinTech Australia members do not have the internal resources to consider, respond and properly engage with consultation processes in a meaningful way.

Consistent with recommendation 2.3 of the Statutory Review of the Consumer Data Right released September 2022, improvements to coordination within the existing CDR structures should be undertaken. Stakeholders require greater direction on future rollouts and timelines for key releases and consultation processes. We encourage government to adopt a coordinated and consistent approach when it comes to consultations and to limit overlap.

In our view, it would be preferable to engage with smaller, discrete change packages addressing single issues rather than large, complex change packages which cannot be considered and responded to in depth within the specified timeframe. Although we appreciate this approach would be novel, it would support the iterative implementation of the CDR and provide greater certainty on progress.



We set out below our comments in relation to some of the key issues arising out from the Amending Rules.

Introduction of business consumer disclosure consent

Under the Amending Rules, a CDR business consumer can consent to an ADR (or CDR representative) disclosing CDR data to specified people (including unaccredited third parties like bookkeepers and consultants) through the business consumer disclosure consent process.

FinTech Australia supports the intention behind the creation of the business consumer consent and welcomes the widened scope of unaccredited parties a CDR consumer can now ask their ADR to disclose their CDR data to. These amendments provide a step in the right direction to support the participation of business consumers (particularly small businesses and software providers) in the CDR.

The changes recognise business consumers are distinct from individual consumers and have unique data needs. The existing restrictions on third party service provider access to datasets that were already available through other methods have been a significant obstacle to small business integration with the CDR through their accounting software platforms.

Business consumers have a range of service providers, which they rely on and with whom they need to share their information. While targeted at facilitating access for non-professional advisers like bookkeepers, the breadth of this new business disclosure consent and the streamlined access to CDR data it provides will likely foster other new use cases and innovative business service providers.

FinTech Australia members remain concerned about the friction of the complex consent processes, more broadly, and how this may limit business consumer uptake and participation in the CDR. This results in an off-putting experience for consumers who are trying to manage multiple consents and leads them to exit the CDR ecosystem before recognising its value. From a consumer experience lens, it's critical that the consent requirements and overall process is as seamless as possible to encourage greater participation.

The introduction of the business consumer disclosure consent provides businesses a greater capacity to use and share data in a way they have not been able to under the current regime, but so long as the consent process remains complex there will remain significant challenges for broader participation in the CDR and this will reduce the adoption of CDR-powered products and increase the disincentive for participants to invest in innovative products and services.

We also note the business consumer consent process operates to allow access to 'non-business information' provided the business linkage can be established. i.e. provision of an ABN by a sole trader. This represents a significant change to the existing regime and some members question how this will operate in practice and if it reflects the policy intent. Small businesses can have significant overlap across business and personal accounts and the key safeguard is the declaration from the small business about business use.



Greater clarity and potentially an example could be provided in the explanatory statement on the 'reasonable steps' expected to be taken by ADRs to confirm a consumer is a business consumer (e.g. whether business registers need to be checked to verify active ABNs). This requirement and the declaration will add friction to the business consumer experience in relation to datasets they are used to being able to freely share with third parties.

Additionally, where an unaccredited third party receives CDR data they would also not be covered under the obligations of the Privacy Act, where that recipient has an annual turnover below \$3 million. However, we note this already happens in practice with data obtained outside the CDR and these risks are managed through the use of accounting software platforms.

Extension of maximum consent duration for business consumers

FinTech Australia members welcome the extension of the business consumer use and disclosure consent time periods from 12 months to 7 years. We see this as good way to remove administrative burdens for business participants and allow them to maintain business continuity over a longer period. It also aligns with separate requirements for businesses to maintain financial records for periods much longer than 12 months.

Currently, if consent lapses or is not actively renewed, the ADR will be compelled under the CDR rules to delete or de-identify the data for that consumer, resulting in significant business disruption and potential loss for a small business consumer who relies on a CDR data product or service.

Extending the consent period reduces the risk that data may have to be deleted. However, Fintech Australia members remain concerned that these changes do not address the difficulty of the consent/re-consent process itself. Whether a business consumer must do this every year or every seven years does not resolve this issue.

As CDR becomes more embedded, collection and usage of data will be critical for businesses going forward. If a business is unable to use data for a week because of administrative oversight or they have forgot to re-consent, the process to obtain consent again may be more burdensome, involving manual verification and creating additional continuity issues.

We note although this change resolves an immediate issue with annual consents, the risk of essential business records and data being deleted is not removed by the seven-year time frame. Additional flexibility may be required to ensure the risks associated with inadvertent consent lapsing are not just delayed.

Further, Fintech Australia members remain concerned about the visibility of consents from a data holder perspective and how a consumer manages these. We also note there have been no changes made to the nominated representative rules, including what happens to a consent if it has been given by a nominated representative who then exits the business. There is a risk that the longer consent period will exacerbate these issues with the nominated representative model. The current annual consent 'refresh' is a mechanism for mitigating this.



Enhancements to CDR outsourcing arrangements

FinTech Australia members welcome the enhancements to the CDR outsourcing arrangements and are supportive of the rules being less prescriptive around the technical and commercial requirements around outsourced providers (OSP) relationships.

We consider these changes will aid greater CDR participation especially by those entities that rely on third parties to help them manage data but currently have difficulty functioning due to the prohibition on CDR representatives engaging OSPs. Here, the expertise of OSPs can be leveraged to create a better outcome for the consumer and the benefits outweigh risks.

Some FinTech Australia members are concerned that these changes add an additional layer of complexity in terms of the additional technical requirements around the setup of these arrangements.

FinTech Australia members maintain this comes down to a broader question of consent management and consent visibility. While we appreciate that within the consent flow itself and the ADR's policies, the customer will become aware of the different OSPs involved with their data, CDR representatives are not visible in this process and this information is not passed on to the data holder. This creates challenges from a consent management perspective and increases the risk of data leakage.

There needs to be greater transparency for the connection between ADR and the use of CDR representatives or OSPs for the consumer. As mentioned in previous submissions, FinTech Australia reiterates the need for downstream traceability so that a consumer has the 'full picture' of the parties involved and their relationship with consumer's data. The ability for a consumer to have traceability of their data disclosures, throughout the ecosystem, is a critical element of a successful and trustworthy data sharing ecosystem. The lack of this visibility breeds distrust and disengagement.

Pilot or trial products

FinTech Australia welcomes the changes to exempt small scale, publicly offered banking pilot products from data sharing obligations. These changes will allow data holders in the banking sector to publicly offer small scale pilot products (for up to 1,000 customers and for a 6-month maximum duration) without being subject to data sharing obligations.

Some of our members have expressed concern that the proposed customer and duration thresholds are too restrictive. Specifically, the 6-month time frame may not provide an adequate period to assess the viability of a product.

FinTech Australia proposes to extend the duration of a pilot product to at least 12 months. The extension of the trial product duration will support businesses to adequately assess the viability of an innovative product. We also suggest further consultation around trial



products across soon to be designated Open Finance sectors to provide certainty that similar arrangements will apply and ensure parameters are appropriate. This type of rule change would be well suited to a more discrete consultation process, rather than forming part of a broader package like this.

A member also suggested greater clarity could be given about how ADRs can use and be involved in testing trial products.

Reciprocity for non-ADIs and notifications of expired consents

Fintech Australia members welcome the changes to delay reciprocal data sharing obligations for ADRs who hold banking data sets until 12 months after they become an ADR.

While we consider these changes will encourage greater participation, Fintech Australia members would like to gain a better understanding as to when exactly the “clock starts” on this 12-month period and what evidence would be required to verify this.

We note that becoming an ADR is just the first step in the journey and that doesn't necessarily mean an entity is able start receiving data yet because it still has processes to go through to become 'active'.

We understand Treasury provided the additional clarification during the stakeholder forum and confirmed that this time period commences when the ADR first receives the data however we anticipate there may still be confusion among stakeholders as to the application of this time frame and how one would demonstrate they are still within this time period.

FinTech Australia members are also keen to understand why this change was created specific for banking data sets and we look forward to a similar expansion of reciprocity to entities within the non-bank lending sector. Although designation of Open Finance sectors is ongoing, it is desirable to provide certainty on matters like non-reciprocity as early as possible.

In relation to the Rule 4.18B change about notification if a collection consent or AP disclosure consent expires, a member raised concerns that it is unclear what scenario is trying to be mitigated. They suggested the drafting of the change makes the distinction of roles between accredited persons, ADRs and representatives more difficult to understand.