

26 October 2022

Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

Thank you for the opportunity to respond to the exposure draft of the proposed amendments to the Consumer Data Right (CDR) rules.

About the Tech Council of Australia (TCA)

The TCA is Australia's peak industry body for the tech sector. The Australian tech sector is a pillar of the Australian economy, contributing \$167 billion to GDP per annum and employing over 860,000 people. This makes the tech sector equivalent to Australia's third largest industry, behind mining and banking, and Australia's seventh largest employing sector.

The TCA represents a diverse cross-section of Australia's tech sector, including data-driven local and global companies, fintech companies, telecommunications providers and venture capital funds with investments in data-driven enterprises.

Overview: The CDR can help create a thriving data ecosystem in Australia

The TCA strongly supports a thoughtful and proportionate approach to data sharing and portability through the CDR that would enable a dynamic, safe and secure data ecosystem for consumers and businesses in Australia.

The CDR has the potential to empower consumers with better products and services and improve competition and cross-sectoral innovation. However, the scheme is limited by design and implementation issues, particularly around functionality and data quality, as outlined in the *Statutory Review of the CDR*.

To date, adoption and use of the CDR has been low, despite being launched nearly two years ago in the financial services sector. Organisations, especially small businesses, are finding it difficult to comply with the scheme, while other accredited organisations are yet to be fully compliant or using the scheme. This has limited the number of vendors and consumer services offered in the market, and restricted data flows in the CDR ecosystem.

The TCA supports a considered rollout of the CDR to other parts of the economy, coupled with measures that make the CDR more workable for a wider range of businesses. In particular, we support measures that reduce compliance burden for businesses and the products and services that they plan to rollout.

We broadly welcome the operational enhancements to the CDR and see them as an important starting point for ensuring the scheme achieves its intended purposes. We have made a series of targeted recommendations below, which we believe will further improve the operation of the CDR.

Recommendation 1: Ensure the rollout of the CDR to the telecommunications sector is measured, harmonised and encourages competition

The telecommunications sector is a leader in data innovation within the Australian economy. The TCA supports rolling out the CDR to the sector in a way that has the potential to create better services and products for consumers, encourage competition and enable further

innovation, while minimising regulatory burden by ensuring the rules seamlessly align with existing regulation.

The draft CDR rules have a complex interaction with a range of existing regulations that apply to the telecommunications sector. These regulations (e.g. under the Telecommunications (Interception and Access) Act and the Privacy Act) often impose different requirements on products and services within the sector in relation to matters such as data retention, data access, dispute resolution and privacy.

Harmonising the CDR rules with existing regulation applying to the sector would help remove unnecessary complexity and reduce compliance costs. This should improve business participation, reduce the risk of implementation issues, and ultimately enable better outcomes for consumers. It will also be important to ensure there are clear obligations for the sector regarding data collection, storage and use, which will be critical as the Government pursues broader cyber security, privacy and data reforms in response to recent data breach incidents.

Recommendation 1.1: Ensure the rollout of the CDR to the telecommunications sector is harmonised with existing sector-specific regulation, noting that telecommunications is already a heavily regulated space. We suggest as a first step that the Treasury undertake more detailed consultation with the telecommunications sector to identify overlaps between the draft CDR rules and existing regulation applying to the sector.

Recommendation 1.2: As part of extending reciprocal data holder obligations for Accredited Data Recipients (ADRs) to the telco sector, we recommend also applying the provision for a 12-month delayed commencement of these obligations (noting the legislation proposes this only for ADRs holding banking datasets).

Recommendation 2: Ensure ADR requirements under business consumer disclosure consent are proportionate and reflect industry practice

The TCA supports the business consumer disclosure consent (BCDC) provision and appreciates the added flexibility that it provides businesses. In particular, we believe the measure has the potential to improve participation of small businesses in the CDR, enhance their experience, and bring in a greater variety of datasets and data use cases. Our main concern is ensuring the new requirements work as efficiently as possible for businesses.

Firstly, we support the requirement for ADRs to take “reasonable steps” to confirm that a consumer is a business by using existing processes, and recommend the Treasury not expand this requirement any further (such as by incorporating Know Your Customer checks). Any move to complicate consent processes may discourage business participation in the CDR. It should always be an overarching principle that the CDR seek to align with existing processes and requirements across relevant industries.

Secondly, we are concerned by the nominated representative process for non-individuals to share data from their bank to an ADR. This process allows for Accredited Data Holders (ADHs) to require paper records, which appears to contradict the intent of the CDR. While we are confident that in time innovation will render paper forms redundant, the difficulty for business consumers in switching banks may elongate the life of this non-optimal process.

Recommendation 2.1: Ensure the requirement for ADRs to take reasonable steps to confirm the identity of consumers does not involve additional obligations (such as Know Your Customers Checks) that go beyond existing business processes. This will incentivise participation in the CDR rollout.

Recommendation 2.2: Transition the nominated representative process to an online format requirement. This ensures interoperability with different data formats and data systems, and reduces CDR administration costs on businesses.

Recommendation 3: Ensure maximum consent durations do not result in the involuntary deletion of business consumer data

The TCA supports the seven-year extension on maximum consent durations for business consumers, and the added flexibility it provides businesses to choose a consent duration that reflects their business needs.

However, some of our members which provide services to business consumers, have raised concerns that as soon as certain consent types lapse, they will be required to delete the CDR data belonging to their business consumer customers. This includes data which may not be accessible anywhere else, such as FBT records, GST records and tax records, and which are required to be kept by law.

The involuntary deletion of CDR business consumer data would make it challenging for businesses to comply with the relevant record-keeping laws. It would also place organisations that provide services to business consumers in a difficult position to have to delete data which is required to be retained by law.

This would be a specific problem in the case of audits and disputes, where lapse of consent could result in the inability to carry out effective audits and settle dispute claims. We recommend Treasury explore data continuity measures to ensure maximum consent durations do not result in the involuntary deletion of business consumer data.

Recommendation 3: Consider additional measures for businesses to reduce the risk of an ADR involuntarily deleting a business consumer's data due to the expiration of maximum consent durations. These measures might include:

- Providing businesses with a 6-12 month grace period after the consent lapses to allow follow-up to renew consent
- Allowing businesses to opt for a longer (or ongoing) consent period.

Recommendation 4: Remove the de minimis customer threshold for new trial products and services

The TCA supports the introduction of a grace period for new trial products and services. This makes it easier for small businesses and other small data holders to innovate and participate in the CDR, and have sufficient data to design and test their initial product offerings, before being required to share CDR data with other organisations.

However, the proposed threshold of 1,000 customers and a 6-month trial period is too low. Feedback from TCA members indicates that the current customer threshold is only suited for preliminary product testing stages (e.g. beta testing) and does not allow for enough data

to be collected to rigorously test and develop a product or service before it is launched in the market. This undermines the intentions of the trial product provision and makes it more difficult for companies – both large and small – to experiment and innovate in established product categories and build customer momentum.

We recommend Government remove the customer threshold and amend the six-month lead time before CDR data sharing obligations commence for trial products and services. This would allow the trial product provision to capture a wider array of products and services and make it easier for start-ups and small businesses to compete with existing industry players, who under the current scheme, are able to obtain data from smaller, competitor firms. This change would also help remove confusion and uncertainty around whether the customer or trial time threshold applies.

Recommendation 4: Amend the trial product provision to remove the proposed 1,000 customer threshold and simply have a 12-18 month trial period before data sharing obligations apply. This would ensure the provision captures a wider array of new products and services and promotes innovation.

We appreciate the opportunity to contribute feedback on the rollout and framework for the CDR and look forward to ongoing dialogue.



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