

14 October 2022

Rules Unit
Consumer Data and Digital Division
Treasury
Langdon Cres
Parkes ACT 2600

By email to data@treasury.gov.au

Dear Rules Unit

Submission to Treasury – Consumer Data Right Rules amendment exposure draft

Thank you for the opportunity to comment on Treasury's proposed amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules)*, which will formally extend the Consumer Data Right (CDR) to the telecommunications sector.

In our April 2022 submission to Treasury's CDR rules and standards design paper for the telecommunications sector (**our design paper submission**),¹ we welcomed being named as a recommended external dispute resolution (EDR) body under the CDR regime. We are pleased to see the proposed amendments implement a role for the Telecommunications Industry Ombudsman (TIO) scheme (**our scheme**) in handling complaints about CDR.

We offer the following observations on the proposed amendments, based on our experience operating an EDR scheme in the telecommunications sector.

1. The proposed amendments may create membership obligations for carriage service providers who are not currently required to be members of our scheme

We understand the proposed amendments will require all carriage service providers (CSPs) to be members of our scheme for the purpose of the dispute resolution of CDR complaints. However, this membership requirement may apply to both the eligible members of our scheme, and a small number of CSPs who are not currently required to join our scheme. This is because the definition of 'carriage service provider' in the [Telecommunications Act 1997](#) is broader than the group of service providers required to join our scheme under the [Telecommunications \(Consumer Protection and Service Standards\) Act 1999](#) (TCPSS Act).

Under sections 127 and 128 of the TCPSS Act, carriers and 'eligible carriage service providers' are required to be members of our scheme. 'Eligible CSPs' includes CSPs who provide services to residential and small business customers. The definition does not include CSPs who only provide standard telephone services to medium and large enterprise customers. Furthermore, section 129 of the TCPSS Act also enables the Australian Communications and Media Authority (ACMA) to declare particular CSPs exempt from the TCPSS Act requirement to be a member of our scheme.²

¹ TIO submission to Treasury – *Consumer Data Right rules and standards design paper for telecommunications sector*, 5 April 2022.

² See the list of carriers and CSPs declared exempt at [TIO scheme requirements and exemptions | ACMA](#).

In practice, this means the amended rules may introduce uncertainty for some CSPs, as they may not be required to join our scheme under the TCPSS Act, but would be required to join under the CDR regime.

Placing a requirement for certain CDR participants to be members of our scheme in the CDR Rules may also introduce potential regulatory crossover. Currently membership of our scheme is regulated by the ACMA under the TCPSS Act, while compliance with the CDR Rules is regulated by the Australian Competition and Consumer Commission (ACCC) under the [Competition and Consumer Act 2010](#).

2. We would welcome further guidance about how CDR complaints can be split between the TIO and AFCA

We note the division of EDR complaints outlined in the proposed amendments, in which complaints about data holders and certain accredited persons are to be handed by our scheme, and complaints about other accredited persons are to be handled by the Australian Financial Complaints Authority (AFCA).

When CDR expands to the telecommunications sector, there may be some situations where a consumer has a complaint that involves both a data holder and an accredited person. In these circumstances, the consumer may need to lodge separate complaints with AFCA and the TIO, and may not know which scheme is most appropriate for their complaint. Depending on the nature of the complaint, resolving it expediently may also require co-ordination between AFCA and the TIO.

We welcome any further guidance Treasury can provide about how complaints should be handled if they involve both data holders and accredited persons.

We continue to support a 'no wrong door' approach to dispute resolution. As CDR is expanded to the telecommunications sector, we will work with AFCA to ensure consumers are not unfairly burdened by the structure of the CDR EDR arrangements.

3. We encourage Treasury to maintain its strong privacy protections as the CDR expands

We note the proposed amendments introduce further scope for accredited data recipients and their CDR representatives to outsource their functions to 'outsourced service providers'. Extra layers of outsourcing may come with additional privacy risks for consumers, as they may mean the relevant accredited data recipient has less control over what happens with the consumer's data.

We encourage Treasury to maintain strong privacy protections for consumers as the CDR expands.

We look forward to seeing the final form of these CDR Rules amendments, and to commenting on any future CDR developments in the telecommunications space.

Yours sincerely,



Cynthia Gebert,
Telecommunications Industry Ombudsman