

CDR Consent Review

CDR rules and data standards design paper

August 2023

Table of Contents

CDR Consent Review	1
Purpose of this design paper.....	3
Rules and standards for CDR consent	3
Other relevant reviews and processes.....	4
Consultation on this design paper	5
Issues for Feedback.....	6
1. Bundling of consents.....	6
2. Pre-selected and actively selected options	10
3. Withdrawal of consent information	13
4. Supporting parties.....	14
5. Notifications.....	17
CDR receipts	18
90-day notifications.....	19
6. De-identification and deletion by default.....	20
7. Dark patterns	21
8. Future work on consent.....	24

Purpose of this design paper

The Treasury and the Data Standards Body (DSB) are reviewing the [Competition and Consumer \(Consumer Data Right\) Rules 2020](#) (the CDR Rules) and Data Standards (standards) for consent to support a better consumer experience while maintaining key consumer protections. The purpose of the review is to help organisations provide intuitive, informed, and trustworthy consent experiences that enable positive outcomes for CDR consumers.

This design paper sets out the proposals that will support the development of the rules and standards on CDR consents. Each of the issues for feedback in this paper expand on the change proposals outlined in [Noting Paper 273 – Consent Review](#) (noting paper).

Example [wireframes](#) have been developed to provide a visual aid to the proposals in this consultation and outline where certain issues identified in this paper may arise. Specific wireframes will be directly referred to where relevant in the content of this paper.

The design paper draws on a range of sources, including:

- Feedback provided in response to [Noting Paper 273 – Consent Review](#) and the public workshops held in November 2022.
- [Consumer Experience \(CX\) research](#) conducted by the DSB specifically for the purposes of the consent review. This research ran between September and November 2022 to examine the viability of simplifying rules and standards relating to consents and dashboards. It engaged a total of 290 consumer participants in the form of unmoderated surveys, unmoderated prototype tasks, and moderated one-on-one interviews.¹
- Historical CX research and community engagement work led by the DSB dating back to 2019, which has engaged over 1000 consumer participants and various community sector organisations in relation to the CDR consent model.²
- The objects set out in the CDR Rules that CDR consents are voluntary, express, informed, specific as to purpose, time limited and easily withdrawn.³
- Findings and recommendations relating to consent in the independent [Statutory Review of the Consumer Data Right – Final Report](#) (Statutory Review).

Rules and standards for CDR consent

Treasury is responsible for advising the Minister, who has the authority to make and amend the CDR Rules, on amendments to enhance and expand the CDR regime. The CDR Rules consist of rules of general application, which have been developed to apply universally across all sectors of the economy, and sector-specific schedules. The CDR Rules for consent are contained within Part 4 and apply in respect of each designated sector. References to requirements on ADRs are generally inclusive of requirements on CDR representatives.⁴

¹ DSB 2022, Consumer Experience Research: [Consent Review Report](#).

² DSB, [Consumer Experience Research and Community Engagement](#).

³ CDR Rules 2020, r 4.9.

⁴ CDR Rules 2020, Division 4.3A.

The Data Standards are developed and maintained by the DSB in the Treasury and made by the Data Standards Chair in accordance with the CDR Rules. The Data Standards for Consumer Experience, Security Profile and Application Programming Interface (API) definitions are published on the [Consumer Data Standards website](#). The Data Standards are publicly consulted on using [GitHub](#), and change requests to the Data Standards can also be raised on the [standards maintenance site](#).

The [Consumer Experience Guidelines](#) (CX Guidelines) provide optional implementation examples for key rules, standards, and best practice recommendations. They include annotated wireframes, open-source assets, prototypes, and a checklist outlining key requirements. The CX Guidelines are used to assist CDR implementation in the banking and energy sectors.

Other relevant reviews and processes

Legislation to introduce action initiation into the CDR

Treasury notes that amendments to the *Competition and Consumer Act 2010* to expand the CDR to enable action initiation were introduced to the Parliament on 30 November 2022.⁵ If passed, the proposed amendments would set up the framework to enable consumers to instruct third parties, known as accredited action initiators, to initiate actions on their behalf and with their consent through the CDR. The proposed amendments would give the Minister declaration and rule-making powers to enliven new action initiation arrangements.

It is envisaged that CDR action initiation could support the sending of instructions on matters such as making payments, switching service providers and updating personal details across accounts. As with the current regime for data sharing, obtaining informed consumer consent for action initiation will continue to be a critical element of the CDR. Feedback from this consultation about how consents are managed and presented for data sharing can help inform future changes to the CDR Rules, including those related to action initiation. Treasury is also planning to undertake separate consultation on action initiation.

Privacy Act Review

We also note that the Attorney-General's Department published its Privacy Act Review Report (Privacy Act Review) in early 2023.⁶ The Privacy Act Review 'considered whether the *Privacy Act 1988* (Privacy Act) and its enforcement mechanisms are fit for purpose in an environment where Australians now live much of their lives online and their information is collected and used for a myriad of purposes in the digital economy'.⁷

The Privacy Act Review made a number of proposals in relation to consent, including:

- Proposal 11.1 – Amend the definition of consent to provide that it must be voluntary, informed, current, specific, and unambiguous.
- Proposal 11.2 – The Office of the Australian Information Commissioner (OAIC) could develop guidance on how online services should design consent requests. This guidance could address whether particular layouts, wording or icons could be used when obtaining consent, and how the elements of valid consent should be interpreted in the online context. Consideration could

⁵ Consultation on the exposure draft legislation to enable action initiation in the CDR closed on 24 October 2022. Details can be found on the [Treasury website](#). Details of the [Treasury Laws Amendment \(Consumer Data Right\) Bill 2022](#) are available on the Parliament of Australia website.

⁶ Attorney-General's Department 2022, [Privacy Act Review Report](#).

⁷ Attorney-General's Department 2022, [Privacy Act Review Report](#), p.1.

be given to further progressing standardised consents as part of any future Australian Privacy Principle (APP) codes.

- Proposal 11.3 – Expressly recognise the ability to withdraw consent, and to do so in a manner as easily as the provision of consent. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.
- Proposal 11.4 – Online privacy settings should reflect the privacy by default framework of the Act. APP entities that provide online services should be required to ensure that any privacy settings are clear and easily accessible for service users.

In relation to proposal 11.2, the Privacy Act Review noted the substantial body of work being progressed in relation to standardising consents under the CDR, and considered the OAIC should work with the Treasury and the DSB to ascertain whether standardisation research undertaken for the CDR could be leveraged more broadly for APP entities covered by the Privacy Act.⁸

The Government is considering its response to the Privacy Act Review Report.

Consultation on screen scraping

‘Screen scraping’ or ‘digital data capture’ are terms used to describe the practice of a consumer sharing their login details with a third party so the third party can, for example, access the consumer’s banking data. When a consumer discloses their login details with a third party, there are associated risks.

Recommendation 2.1 of the independent Statutory Review of the CDR was that ‘screen scraping should be banned in the near future in sectors where the CDR is a viable alternative. Importantly, the Government should clearly signal when and how the implementation of the ban would take effect. This would provide certainty and adequate time for businesses to transition, along with stronger incentives to invest in moving to the CDR.’

The [Government’s statement in response to the Statutory Review](#) released on 7 June 2023 outlined that the Government will consult with stakeholders to determine options to regulate screen scraping, commencing in the banking sector, starting with the release of a discussion paper in the second half of 2023. Treasury will be releasing a discussion paper in due course.

Consultation on this design paper

Treasury and the DSB seek feedback on the proposed policy approach set out in this paper, as well as the consultation questions, by Friday 6 October 2023. Feedback can be provided via email to CDRRules@treasury.gov.au. Feedback, comments and ongoing discussion can also be lodged on the public [GitHub page](#) maintained by the DSB.⁹

Feedback provided in response to this paper will be used to develop the draft amendments to the CDR Rules for CDR consents and will inform Treasury’s advice to the Minister. It will also inform the DSB’s development of consumer experience standards. Stakeholders will have a further opportunity to provide feedback on draft rule amendments and standards at a later stage.

⁸ Attorney-General’s Department 2022, [Privacy Act Review Report](#), p.106.

⁹ Feedback posted on GitHub is public by nature at the time of submission. Content posted on GitHub should be made according to the community engagement rules published by the DSB.

Privacy Impact Assessment

Treasury is also commissioning a Privacy Impact Assessment (PIA) considering the privacy risks of making the changes to the CDR Rules and standards for CDR consents. Treasury seeks feedback on any privacy issues or risks relating to changes to the CDR Rules and standards that should be addressed in the PIA.

Issues for Feedback

The issues for feedback in this design paper expand on the change proposals outlined in [Noting Paper 273 – Consent Review](#) (the noting paper).¹⁰ However, not all of those proposals are included in this design paper. In particular:

- Data language standards – Changes to data language standards have been deprioritised, as these did not present a compelling case for change at this time. Data language standards will continue to be a research focus for the DSB’s CX working group.
- Authentication information – Changes to authentication information will be progressed as part of the Authentication Uplift work currently being conducted by the DSB.¹¹
- Dashboards for once-off consents – We are not proceeding with the proposal to remove dashboard requirements for once-off consents, as feedback indicated that dashboard requirements are important for the management of CDR consents.

1. Bundling of consents

The CDR Rules require that an accredited person’s processes for asking a CDR consumer to give a consent must not bundle consents with other directions, permissions, consents or agreements.¹²

‘Bundled consent’ is not a defined term within the CDR Rules. We note the OAIC’s CDR Privacy Safeguard Guidelines describe bundled consent as the ‘bundling’ together of multiple requests for a consumer’s consent to a wide range of collections, uses and/or disclosures of CDR data, without giving the consumer the opportunity to choose which collections, uses or disclosures they agree to and which they do not.¹³ The OAIC recognises bundling practices as having the potential to undermine the voluntary nature of the consent.¹⁴

The CDR Rules include multiple types of consents, including consents to collect, use, disclose or de-identify CDR data, or conduct direct marketing activities.¹⁵ For the purpose of this paper, we use the term ‘bundling’ to refer to an Accredited Data Recipient (ADR) requesting that the consumer agree to multiple consents at the same time through a single express action. While a consumer will generally be required to agree to a number of consents before being provided with a good or service, where the consumer is given the option to individually select which consents they agree to and which they do not, those consents will not be considered to be bundled. This paper uses the terms ‘combined’ and ‘integrated’ to refer to a single flow or process that contains multiple consents

¹⁰ DSB 2022, [Noting Paper 273 – Consent Review](#).

¹¹ DSB 2022, [Noting Paper 280 – The CX of Authentication Uplift](#) and [Noting Paper 258 – Independent Information Security Review](#).

¹² CDR Rules 2020, r 4.10(1)(b)(ii).

¹³ OAIC 2022, [CDR Privacy Safeguard Guidelines - Chapter C: Consent](#), C.44.

¹⁴ OAIC 2022, [Australian Privacy Principle Guidelines – Chapter B: Key Concepts](#), B.49.

¹⁵ CDR Rules 2020, r 1.10A(1).

or permissions that the consumer would agree to in separate, distinct actions. This contrasts with a bundled consent, where agreement is signalled through a single express action.

The Statutory Review found that:

The consent process is central to CDR's realisation of informed consumer decision making and delivery of consumer benefits. Complex consent processes may discourage participation in the CDR and contribute to 'consent fatigue',¹⁶ which may undermine genuine consumer consent. As the CDR evolves, the consent process should be monitored and adjusted to ensure benefits are realised, and as the CDR expands to include actions and payments, further consideration should be given to other consent models, such as bundling of consents.¹⁷

The Statutory Review also noted that care must be taken to ensure any changes do not undermine the consumer's informed consent.¹⁸

Consent Review Noting Paper

The noting paper considered whether the bundling restriction could be amended to allow 'bundling' of CDR collection, use and/or disclosure consents where each consent type is necessary for the requested good or service to function. CDR consents that are not necessary for the provision of the good or service would not be able to be 'bundled' and would therefore always require individual active selection by the CDR consumer. This would prevent bundling of consents that can function separately to the good or service that is requested, including direct marketing consents and de-identification consents. Where a consent is bundled, the consumer would still be presented with all necessary information about the consents they are agreeing to in order to receive the good or service.

Feedback in response to the noting paper was mixed. A number of stakeholders expressed in-principle support for bundling as consolidating the consents into a single streamlined process would reduce 'friction'¹⁹ and 'cognitive load'²⁰ for the consumer, and would align with the ADR's proposition and the consumer's expectations.

Other stakeholders submitted that bundling could undermine the effectiveness of the CDR consent process. These stakeholders considered that even where a consent is necessary for the service, requiring an active selection creates pause for the consumer to consider their relative comfort with how the ADR proposes to handle their personal information, which may be particularly important for consumers who are disengaged or have vulnerabilities. One stakeholder cautioned that bundling may lead to 'tick and flick' approaches, less consumer engagement, and that bundling may 'hide' elements of the consent that the consumer may not be comfortable with. Several stakeholders also queried what it meant for a consent to be 'necessary' or 'required' for a service and noted that it may not be clear to the consumer whether a consent is necessary or not.

¹⁶ The term 'consent fatigue' describes the disengagement or mental exhaustion that consumers may experience when asked to comprehend technical or extensive information, or engage in multiple and repetitive interactions.

¹⁷ Treasury 2022, Statutory Review, Finding 2.2.

¹⁸ Treasury 2022, Statutory Review, p. 43.

¹⁹ The term 'friction' refers to obstacles that impede a consumer's progress when attempting to complete a task. Not all friction is bad. 'Negative friction' is used for obstacles that act against a consumer's interests or introduce unnecessary complexity such as making it difficult to unsubscribe. On the other hand, 'positive friction' may prevent errors or unintended outcomes, such as asking 'Are you sure?' before an irreversible action occurs.

²⁰ The term 'cognitive load' refers to the amount of mental effort required to complete a task or process information.

Consumer research

CX research to-date has found that, for consumers, the data that the ADR requests and the services delivered are inextricably linked. CX research conducted by the DSB since 2019 has shown that bundling collection and use consents matched consumers' 'mental models'.²¹ Further, 2021 research into disclosure consents, including trusted advisor disclosures and insight disclosures, showed that where a disclosure was the primary purpose for data collection and use, then bundling of collection, use and disclosure aligned with consumers' mental models.²² This mental model has been evidenced in research across sectors and use cases. The DSB will continue to conduct CX research on a variety of use cases and sectors as they are designated, to ensure this mental model continues to hold true.

2022 CX research suggests that a use consent outlining a clear description of the service also provides consumers with reassurance and clarity to justify the data requested in the collection consent.

Proposed approach

Bundling CDR consents

Consents reasonably required for the provision of the requested service

As described in the noting paper, we propose to amend the bundling provisions in the CDR Rules to expressly permit ADRs to bundle consents that are reasonably required for the provision of the requested service. The term 'reasonably required' in this context refers to situations where it would not be possible for the ADR to provide the service to the consumer without the consumer giving the consents. For example, the ADR could seek a bundled collection and use consent in a single action where they are reasonably required for the service. See [wireframe 2.1 - bundled collection and use consents](#) for a visual example of this scenario. However, the CDR Rules would continue to prevent an ADR from bundling direct marketing and de-identification consents.

The proposed approach of bundling collection and use consents is supported by the 2022 CX research, which found that customers are likely to assume that, or assess whether, the collection of the data relates to the use for which it is being collected. Separating these consent types into separate proposals may unnecessarily increase cognitive load for the consumer without increasing real choice.

Some stakeholders proposed that where a consumer has entered into bundled consents there should be flexibility for those consents to be subsequently unbundled and managed separately, such as when a consumer seeks to withdraw one consent type without discontinuing others. Under the proposal, the CDR Rules would continue to provide the flexibility for ADRs to provide consumers with the ability to individually withdraw consents via their consumer dashboard, even where the initial consents were bundled. For example, an ADR may provide functionality for a collection consent to be withdrawn without affecting the use consent if it is possible for the service to continue to be provided without collecting additional CDR data, or alternatively provide the ability for all consents relating to the service to be withdrawn together.²³

²¹ The term 'mental model' is used to describe how a person expects something to work. If a process does not align with a mental model, then it does not work as expected.

²² See [21Q4.1CO3-1CO4.R1-2: Disclosure Consent Research Report](#).

²³ CDR Rules 2020, r 4.13 (withdrawal of consent) supported by r 4.18A which requires a consumer be notified if a collection consent is withdrawn but a use consent is ongoing. The equivalent rules for CDR representatives are 4.20J and 4.20Q respectively.

Bundling of disclosure consents

We welcome further views on whether the CDR Rules should permit bundling of disclosure consents where they are necessary for the provision of the service. We consider that a disclosure consent would only be reasonably required for the provision of the service (and therefore permitted to be bundled) in circumstances where the ADR's service is for the CDR data to be collected and disclosed. For example, a consumer may wish to use a CDR service for the purpose of disclosing their banking data to their accountant, with whom they have an existing relationship. See [wireframe 2.2 - bundled disclosure consent](#) for a visual example of a bundled disclosure consent.

However, we also note that disclosures may be to third parties not affiliated with the ADR or regulated by the CDR and who may not be subject to the Privacy Act.²⁴ We therefore see merit in ensuring these consents are distinct from any collection and use consents provided by the consumer.

Potential bundling in action initiation

The proposed approach to permit bundling of consents that are necessary for the provision of the service could also have flow-on benefits for the potential introduction of action initiation in the CDR. In order to complete an action, consumers may need to provide several consents. A broad range of future actions within the CDR could rely on data being collected from data holders, being used to assist consumers to make choices and to facilitate preparation of action instructions. Successful adoption of action initiation will rely on giving all the necessary information to consumers to enable them to make informed decisions while also minimising cognitive load and presenting choices in a comprehensible manner.

Services that request CDR consents and non-CDR permissions

In the public workshops, stakeholders noted that ADRs would commonly need to ask consumers to provide other non-CDR permissions, consents or agreements to complement a CDR consent. One stakeholder also expressed support in their written submission to the noting paper for more streamlined consumer experiences for services that request the consumer to set up and authorise a payment agreement (such as PayTo) and provide CDR consents.

The CDR Rules and standards do not deal directly with ADRs requesting CDR and non-CDR permissions for the same service. While there is potential to streamline consent flows by bundling CDR consents, or by combining CDR consents with non-CDR permissions in a single consent flow, it is important that ADRs do not mislead consumers about the consents they are entering into and their rights under the CDR framework. In particular, if an ADR were to seek CDR consents and non-CDR permissions for the same service using an integrated consent flow, there is a risk that the consumer may misunderstand the application of the protections provided under the CDR or mistakenly attribute these to the non-CDR consents.²⁵

²⁴ *The Privacy Act 1988* does not apply to businesses with an annual turnover of \$3 million or less, with some exceptions. Where a disclosure consent is sought to disclose data to a trusted adviser, insight disclosure or business consumer disclosure consent recipient under the CDR, [consent standards](#) require ADRs to state to the consumer in the consent flow that data disclosed to the non-accredited person will not be regulated as part of the CDR and advise the consumer to review how the non-accredited person will handle their data.

²⁵ See [Guidance on screen-scraping](#).

We would welcome submissions on clarifications required with respect to how CDR consents may be requested where non-CDR permissions, consents or agreements are requested for the same service.

Consultation questions

1. Do you support the bundling of CDR consents that are reasonably required for the provision of the service requested by the consumer? Do you consider the proposal strikes the right balance to reduce cognitive load while maintaining informed consumer consent?
2. Should disclosure consents be able to be bundled where the service requested by the consumer is for their data to be collected and disclosed (e.g. as an insight or to a trusted adviser)?
3. Do you consider clarification is required with respect to how CDR consents may be requested where non-CDR permissions, consents or agreements are requested for the same service? If so, what changes should be considered?
4. What are the key opportunities associated with combining or integrating CDR and non-CDR consents within a single consent flow? Are there any barriers or risks associated with these opportunities?

2. Pre-selected and actively selected options

ADRs are required to allow a consumer to actively select or otherwise clearly indicate their consent to key consent terms, including in relation to CDR data to be collected or disclosed, uses of collected data, the period of the consent, and the recipient of data under a disclosure consent.²⁶ The CDR Rules also prohibit ADRs from presenting these terms as pre-selected options to the consumer, and suggest that un-filled checkboxes in relation to these terms could be presented to the consumer for selection.²⁷

The Statutory Review found that the consent process needs to be intuitive for consumers to engage with the CDR but did not make any findings in relation to active selection of consent terms.²⁸

Consent Review Noting Paper

Similar to the bundling discussion above, the noting paper considered that requirements for consumers to actively select particular terms of their consent, without them being pre-selected, could be revised to address concerns that they introduce a false choice where the options are required for the service to be provided. The noting paper considered whether these options could be pre-selected or clearly indicated where they are essential to the provision of the service.

Feedback from stakeholders largely reflected the feedback received on the bundling proposal. The majority of submissions expressed in-principle support for allowing pre-selected options noting that these changes would support a simple, clean and informed consent experience and reduce the cognitive load on consumers. Some commented that consumers have become familiar with screen scraping, which they consider to be simpler than current CDR consent processes. Others noted that ADRs must comply with the data minimisation principle which provides a layer of protection by

²⁶ CDR Rules 2020, r 4.11(1). The equivalent rules for CDR representatives are 4.20D and 4.20E respectively.

²⁷ CDR Rules 2020, r 4.11(2) and the example note under r 4.11(1). The equivalent rules for CDR representatives are 4.20E(2) respectively.

²⁸ Treasury 2022, Statutory Review, p. 43.

limiting the CDR data that can be collected, and the uses of that data, to what is reasonably needed to provide the requested goods or services.²⁹

However, some submissions raised concerns around lack of choice for consumers and considered that requiring active selection introduces ‘positive friction’ and ensures that consumers meaningfully engage with the consent process. They also considered there were risks that, despite being required to comply with the data minimisation principle, ADRs would collect more data than necessary if consumers do not understand or engage with what is essential and what is not. Some stakeholders suggested specific alternative approaches that could be taken, including the ability for consumers to de-select required options, and ADRs providing additional information in the consent flow about why the options are required.

Consumer research

The requirement to actively select consent terms aimed to support engagement, comprehension, and informed consent. CX research conducted in 2020 and 2022 found that omitting the actively select requirement, and instead clearly indicating the particular terms of the consent, did not meaningfully reduce engagement, comprehension, or informed consent.^{30 31}

A few participants in the 2022 CX research expressed a desire for control over datasets without being prompted, while some saw active selection of required data as a false choice and unnecessary step. Some other participants saw active selection as a marker of control when prompted, but also understood it to be an illusion of control if they could not proceed without selecting the datasets. Most participants understood that the absence of checkboxes or toggles meant that the datasets were needed for the service.

Technical limitations mean that some datasets must be selected for others to be accessed, such as Transaction Details, which cannot be accessed without the Account Balances and Details data cluster. Allowing ADRs to clearly indicate the required datasets would avoid the need for consumers to understand these technical dependencies and service requirements to provide informed consent.

In relation to actively selecting a consent’s duration, the 2022 CX research showed that some consumers desired control while others expected the data recipient to determine the most appropriate option based on the service. This is likely to be dependent on the use case itself, where some use cases may afford more flexibility as to the duration of the consent than others. The use case tested in the 2022 CX research, a Personal Finance Management app, likely influenced perceptions of how much control over the duration could be exercised.

Finally, the 2022 CX research supported having the description of the required use(s) as part of the overarching purpose description, provided these use(s) are limited to what is essential to the provision of the good or service. If a use is seen as unnecessary or complementary, this CX research supported it being presented as an opt-in add-on or secondary option with the ability to actively select.

²⁹ CDR Rules 2020, r 1.8 defines the data minimisation principle.

³⁰ DSB 2020, Consumer Experience Research [Phase 3: Rounds 4-6](#).

³¹ DSB 2022, Consumer Experience Research: [Consent Review Report](#).

Proposed approach

Options to seek consent to terms

Datasets

We propose that, instead of requiring a consumer to actively select each dataset, ADRs be allowed to clearly indicate the datasets that are essential for the service to function. Clear indication of datasets would only be permitted if the service could not be delivered without the specified data. ADRs would continue to be required to explain to the consumer why the collection and use of identified datasets is compliant with the data minimisation principle.³² See [wireframe 3.1 - clearly indicated datasets](#).

Where an ADR requests access to data clusters that are not essential for a service to function, these must remain opt-in, and therefore require active selection by the consumer. An example may be a Personal Finance Management service, where access to the Transaction Details cluster is essential for the service to function. The ADR could allow the consumer to optionally choose to share the Direct Debits and Scheduled Payments cluster, which, while not essential for the service to function, would enhance the service if shared. See [wireframe 3.2a - actively selected optional expansion to consent](#) for a visual example.

Consent duration

In relation to a consent's duration, we propose that ADRs be allowed to specify a duration where it is reasonably required for the requested service to function. While some goods and services may be delivered according to a range of durations, others may require specific or minimum durations to function properly. Where a specific duration is reasonably required for the provision of the service, we propose that ADRs be able to clearly indicate the duration without the ability for it to be altered by the consumer, and without the need for the consumer to actively select the specified duration. See [wireframe 3.3 - clearly indicated duration](#) for a visual example. If an ADR's offering affords greater flexibility, the ADR may pre-select a reasonable duration alongside alternative durations that a consumer can choose instead. See [wireframe 3.4 - pre-selected and editable duration](#) for a visual example of how a pre-selected duration with consumer control to edit could be presented.

Consent purpose

Rather than require each specific use of collected data to be actively selected by the consumer, we also propose that ADRs be permitted to describe the uses of CDR data as part of the overarching purpose of the consent. Consistent with the objects of consent and the data minimisation principle, this must be done in a way that is specific and unambiguous and would only allow the collection and use of CDR data that it is reasonably needed for the provision of the good or service. An ADR may choose to elaborate on how the data will be used in addition to the overarching purpose, which may include a description of how each data cluster will be used, if there is differentiation, or a more detailed explanation of the uses to which all data will be put.

An ADR may also describe optional features that the consumer may select when providing a consent, which the ADR may allow the consumer to separately withdraw or manage. As these are optional features, they would need to be actively selected by the consumer. See [wireframes 3.2a-c – actively selected optional expansion to consent](#) for visual examples of how different expansions to the consent could be presented.

³² CDR Rules 2020, r 4.11(3)(c). The equivalent rules for CDR representatives are 4.20E(3)(f) respectively.

Amending consents

Currently, the CDR Rules allow ADRs to pre-select certain options when inviting or allowing a consumer to amend an existing consent. This includes the pre-selection of datasets the consumer has already given the ADR consent to access, the duration that applies to the consent, and the person selected for a disclosure consent.³³ New datasets or terms cannot be pre-selected; they must be actively selected by the consumer.

This approach highlights to the consumer what was previously agreed and any new terms being proposed. However, this approach may be impacted by the bundling and pre-selection proposals. This is because any pre-selected options in an amending consent request would no longer clearly differentiate options the consumer had previously consented to from newly proposed options.

To address this issue, we propose that ADRs be required to indicate any new or amended terms in the amending consent request, but that ADRs still be allowed to pre-select or clearly indicate any additional datasets that are required for the amended service. Equivalent requirements for data holders already exist in the CX standards for amending authorisations, where amended attributes must be indicated in the authorisation flow.³⁴

Consultation questions

5. Do you support the ability for ADRs to pre-select or clearly indicate datasets, specified uses and consent durations where their selection is essential for the service? Do you consider the proposal strikes the right balance to reduce cognitive load while maintaining informed consumer consent?
6. Are there specific design patterns or approaches that you support to ensure that the data types and consent duration are clear to the consumer in the consent?

3. Withdrawal of consent information

When seeking consumer consent, ADRs are required to provide consumers with information about withdrawal of consent, including a statement that consent can be withdrawn at any time, instructions for how to withdraw consent, and a statement indicating the consequences of withdrawing consent.³⁵ ADRs are also required, as part of the withdrawal process, to advise the consumer to review the consequences of withdrawal before they stop sharing their data.³⁶

ADRs are not required to include information about withdrawal of consent in the CDR receipt or 90-day notification.³⁷

Consent Review Noting Paper

The noting paper considered whether the requirements for withdrawal of consent information to be presented during consent could be revised, removing the need for instructions and consequences to be presented. It posited that ADRs could consider communicating the consequences of cancelling the

³³ CDR Rules 2020, r 4.12C. The equivalent rules for CDR representatives are 4.20I.

³⁴ DSB, [CX standards for amending authorisations](#).

³⁵ CDR Rules 2020, r 4.11(3)(g). The equivalent rules for CDR representatives are 4.20J.

³⁶ DSB, [CX standards for withdrawal standards](#).

³⁷ CDR Rules 2020, rr 4.18 and 4.20. The equivalent rules for CDR representatives are 4.20O and 4.20U.

process if a consumer attempts to exit the flow using best practice design patterns, being mindful that it should be done in a way that is non-coercive and does not constitute a dark pattern.³⁸

Feedback on the noting paper broadly supported the proposed approach of removing requirements for instructions and consequences to be shown during the consent flow. Many submissions noted the importance of a simple and intuitive withdrawal process, including that the process for withdrawing consent should be no more difficult than granting it.

Consumer research

The CX research conducted in 2022 highlighted the importance of knowing that consent can be withdrawn at any time. Many consumer participants responded to this information positively at various stages in the consent flow, with some stating that this gave them confidence to proceed. By contrast, the absence of instructions for how to withdraw consent, and the consequences for withdrawing consent, did not negatively impact consumer participants' trust or informed consent.

The presence of withdrawal of consent instructions in the CDR receipt and CDR policy matched expectations. When information participants were asked about the information they consider would be important to be provided within a CDR receipt, they most frequently cited consent management information and withdrawal instructions.

Proposed approach

Consistent with the proposals in the noting paper, we propose to remove the requirement to include instructions for how to withdraw consent in the consent flow itself, and instead require that these details be included in the CDR receipt and in the 90-day notification. The ADR would still be required to provide information within the consent that the consumer can withdraw their consent at any time. See also the Notifications section of this paper.

It is also proposed that ADRs no longer be required to state the consequences of withdrawing the consent before a consumer considers giving their consent. This would not negate the existing requirement for an ADR to state the consequences of withdrawing a consent as part of the actual withdrawal process. Consumers would still be prompted to consider the consequences of withdrawal as part of the withdrawal process.

Consultation questions

7. Do you support the proposal to remove withdrawal of consent instructions from the consent flow and instead provide them in the CDR receipt?
8. Do you support the proposal to remove information about the consequences of withdrawing consent from the consent flow?

4. Supporting parties

The CDR Rules have varying requirements on how the names and details of any sponsors, principals and Outsourced Service Providers (OSPs) are displayed as part of the consent flow. The CDR Rules require names and accreditation details of any sponsors and principals to be displayed to a consumer when requesting a consent. However, if an ADR or CDR representative uses OSPs, the ADR

³⁸ Dark patterns are described in section 7 of this paper.

or CDR representative only needs to state this fact and refer the consumer to the CDR policy for more information, with the CDR policy containing the full list of supporting parties.³⁹ CDR representatives are also required to identify where they are located (if outside Australia) but this information is not provided for supporting parties.⁴⁰

This inconsistency results in divergent implementations in terms of design and levels of transparency. The CX Guidelines have suggested that, where used, a consistent approach is adopted for sponsors, principals and OSPs.⁴¹

Consent Review Noting Paper

Feedback to the noting paper indicated broad support for the consistent display of information relating to sponsors, principals and OSPs, although some stakeholders suggested that requiring this to be presented upfront may negatively impact comprehension and cognitive load, particularly where there were a large number of supporting parties. It was suggested that design patterns could be used to help reduce cognitive load, while not reducing access to additional information about the supporting parties.

One stakeholder highlighted that not all supporting parties access data, even though they may be involved in the delivery of the good or service. They suggested that requiring a consistent approach for all supporting parties may result in unnecessary conflation and cognitive load.

Consumer research

CX research conducted in 2020 and 2022 has found that consumers expect transparency when it comes to who may be accessing their data.^{42 43} Consumer participants consistently stated a preference for this level of detail to at least be accessible to support trustworthiness and informed consent.

Consumer participants indicated the importance of knowing whether third parties access their data, including whether such third parties are 'legitimate' or 'Australian-based'. Transparency over these arrangements was seen as key, including which OSPs are involved in providing the service, why they are involved, how their data would be accessed and handled, and what benefit, if any, the OSP would get from their data.⁴⁴

Proposed approach

Information about supporting parties at the time of consent

Based on CX research and stakeholder feedback, we propose that consent information requirements relating to OSPs, sponsors, and principals be aligned to support consistency and transparency.

³⁹ CDR Rules 2020, rr 4.11(3) and 4.20E.

⁴⁰ CDR Rules 2020, r 4.20E.

⁴¹ DSB 2022, [CX Guidelines: CDR outsourcing, sponsorship, and CDR representative arrangements](#).

⁴² DSB 2020, Consumer Experience Research [Phase 3: Rounds 4-6](#).

⁴³ DSB 2022, Consumer Experience Research: [Consent Review Report](#).

⁴⁴ DSB 2020, [Consumer Experience Research Phase 3: Round 4 and 5 Report](#).

We propose to clarify the existing notification requirements so that consumers are required to be notified as part of the consent flow about which supporting parties may access the consumer's CDR data based on the relevant supporting parties at the time of consent. In addition to principals in CDR representative arrangements and sponsors in a sponsor-affiliate arrangement, this would introduce a requirement to identify any direct or indirect OSPs who may access the consumer's CDR data. If a supporting party will not access the consumer's CDR data, they need not be listed.

Under the proposed notifications, the consumer would be provided with the following information about supporting parties:

- The name of the supporting party;
- If applicable, the supporting party's accreditation number;
- If applicable, a link to the supporting party's CDR policy;
- The country in which the supporting party is located; and
- Concise information on why the supporting party will access the consumer's CDR data, which may include to collect it from the data holder or to receive it from an ADR for the purposes of analysing or transforming the data.

This information would be consistent with information provided in the ADR's CDR policy, such that an ADR could rely upon this existing content for the purposes of making it accessible in the consent flow itself.⁴⁵ Flexibility would exist for ADRs to present this information using an appropriate design that maintains accessibility to the information while limiting cognitive load. See [wireframe 5.1 – supporting parties](#) for a visual example of how this could be achieved. The CX guidelines on OSPs, sponsorship and CDR representative arrangements already recommend this approach, which ADRs have successfully implemented.⁴⁶

Notifications where supporting parties change or are added

When supporting parties change, the ADR must update the list of supporting parties in its CDR Policy, however there is no requirement that consumers be made aware when this change occurs.⁴⁷

To ensure consumers are prompted to consider that supporting parties may change over the course of a consent, we consider it may be appropriate for the ADR to note in the consent flow, when identifying the supporting parties, that the supporting parties may change over time.

It may also be appropriate to notify the consumer when the list of supporting parties who may access the consumer's CDR data changes – including in situations where the ADR did not state that the consumer's CDR data may be disclosed to an OSP as part of the consent flow.⁴⁸ This could prompt the consumer to review the ADR's CDR policy. We welcome feedback on what information or notifications should be provided where supporting parties change.

⁴⁵ CDR Rules 2020, r 7.2(4).

⁴⁶ DSB, [CX Guidelines: CDR outsourcing, sponsorship, and CDR representative arrangements](#).

⁴⁷ CDR Rules 2020, r 7.2(4).

⁴⁸ At present, r 4.11(3)(f) places an obligation on ADRs to inform a consumer at the time of obtaining consent if a consumer's CDR data may be disclosed to an OSP.

Consultation questions

9. Do you agree with the proposal to align the consent information requirements for OSPs, sponsors, and principals?
10. Do you consider ADRs should notify consumers if the list of supporting parties that may access a consumer's CDR data changes? If so, how should this notification be made?
11. Are there any further issues that should be considered in relation to supporting parties?

5. Notifications

The CDR Rules require ADRs to provide notifications and related artefacts to consumers for a range of purposes. This includes providing a CDR receipt to a consumer after a consent has been given, amended, or withdrawn,⁴⁹ and providing ongoing notifications, referred to as 90-day notifications, to regularly alert the consumer to the fact that a consent is still active.⁵⁰

CDR receipts and 90-day notifications play a critical role in consent management. The CDR receipt provides a record of what was agreed to and reduces the need for a consumer to recall the terms of a consent after the fact, which helps maintain informed consent. The 90-day notification also supports informed consent by notifying a consumer who has been idle for 90-days that the ADR is continuing to collect and/or use their CDR data.

However, the scope of the CDR receipt requirements in the CDR Rules are quite broad, encompassing specific details about the consent as well as 'any other information' provided to the consumer at the time of consent.⁵¹ The broad scope of the current CDR Rules on receipts may result in extensive and extraneous information being provided to a consumer. This risks increasing cognitive load while simultaneously reducing the utility of the CDR receipt.

Certain 90-day notification requirements may unnecessarily increase cognitive load and reduce their utility for different reasons. Since these notifications are unable to be consolidated, a consumer who has provided multiple consents to the same ADR in a short timeframe, such as consents to collect and use data from multiple data holders, may receive multiple 90-day notifications in quick succession, which may repeat every 90 days. Further, the utility of the current notification is limited in that it only applies to collection and use consents and because the notification is informative but not actionable.

Consent Review Noting Paper

To address these issues, the noting paper suggested several ways to improve CDR receipts and 90-day notifications. This included that the broad scope of the CDR Rules on receipts be refined to avoid extensive and extraneous information being provided. The paper also suggested that 90-day notifications could be consolidated to apply to all current consents with an ADR, tailored according to a consumer's notification preferences, and made more useful and actionable.

⁴⁹ CDR Rules 2020, r 4.18. CX guidelines also recommend that the data holder provide a CDR receipt when a consumer provides an authorisation to share CDR data.

⁵⁰ CDR Rules 2020, r 4.20(1)(b). The equivalent rules for CDR representatives are 4.20U(1)(b).

⁵¹ CDR Rules 2020, r 4.18. The equivalent rules for CDR representatives are 4.20O.

Feedback to the noting paper indicated broad support in relation to both areas. For CDR receipts, stakeholders supported more explicit requirements to increase consistency. Stakeholders also supported the ability to consolidate 90-day notifications so a single notification can refer to multiple consents given at different times, but the feedback generally suggested that any such ability remain optional.

Consumer research

In general, CX research conducted in 2019 and 2022, as well as analysis suggests that contextual notifications are useful and necessary.⁵² However, the concept of ‘notification fatigue’ may arise as a result of notifications sent in high volume, and particularly where the content of the notification is not informative or actionable.

The CDR receipt has been shown by CX research conducted in 2020 and 2022 to provide a critical record of consents for later reference, but also to maintain informed consent and comprehension after a consent has been given.⁵³ CX research has demonstrated that this artefact facilitates informed consent and consumer control by reducing the need for consumers to recall the terms of consents given during time-constrained processes.

Proposed approach

CDR receipts

Consistent with the proposal put forward in the noting paper, we propose to clarify the information requirements for CDR receipts to reduce ambiguity, increase consistency, and facilitate compliance. Specifically, we propose that revised CDR receipt information requirements be:

- The purpose of the consent(s);
- What data the consumer gave consent for the ADR to collect, use, or disclose;
- If any direct marketing or de-identification consents apply;
- When each consent was given, along with its duration and/or date of expiry;
- The name of the CDR participant from whom data was collected under a collection consent and the name of the recipient of data under any disclosure consents;
- For an insight disclosure consent — a description of the CDR insight;
- The details of any supporting parties that may access the consumer’s CDR data at the time of the event that triggered the CDR receipt, be it consent, amendment, or withdrawal;
- A link to the CDR policies of any ADRs involved in the consent;
- Instructions for dashboard access to review the most up to date information;
- If the consent is ongoing, the fact that the consent(s) can be withdrawn, and instructions for how to withdraw consent(s);
- Information on redundant data handling and, if the consent has expired or been withdrawn, when redundant data is expected to be deleted or de-identified; and

⁵² DSB 2019, [Consumer Data Standards: Authenticate, notify, reauthorise - Phase 2 CX Stream 3 Report](#).

⁵³ DSB 2020, [Consumer Experience Research Phase 3: Round 6](#).

- Information on dispute resolution and making a complaint.

This would replace the requirement that the CDR receipt include any other information provided to the consumer when obtaining the consent.

Consultation questions

12. Do you support the proposal to clarify the rules on CDR receipts by explicitly specifying the content of CDR receipts?
13. Do you support the proposed information required to be contained in a CDR receipt?

90-day notifications

Consolidation of notifications

Consistent with the proposal put forward in the noting paper, we propose that 90-day notification requirements be amended to allow ADRs to consolidate the delivery of these notifications and tailor their delivery according to a consumer's preferences. For example, this would allow, but not require, an ADR to consolidate all active consent reminders in a single notification at least every 90 days.

An ADR may also invite a consumer to tailor preferences for the frequency and delivery of 90-day notifications.

Utility and actionability of notifications

We propose that the 90-day notification requirements apply to all active consents, not just collection and use consents, such that they include disclosure, de-identification and direct marketing consents.

To increase the utility of the 90-day notification, specific information requirements are proposed for inclusion in the 90-day notification. This information is a subset of the information contained in the CDR receipt and includes:

- The name of the CDR participant from whom data is being collected under a collection consent and the name of the recipient of data under any disclosure consents;
- When each consent was given, along with its duration and/or date of expiry;
- Any direct marketing or de-identification consents that apply;
- Instructions for how to access the dashboard to review the most up to date information and manage consents; and
- Instructions for how to withdraw consents, including other than through the dashboard by using a simple method of communication that the ADR has made available for that purpose.

The presentation of this information can remain flexible, such that an ADR could provide a simple and minimal push notification and only present the detailed content if or when a consumer engages with the push notification. Alternatively, an ADR could choose to deliver the entirety of this content in an email.

Consultation questions

14. Do you support the proposal to allow 90-day notifications to be consolidated?
15. Do you support the proposal to allow consumers to tailor the frequency and delivery of 90-day notifications?
16. Do you support the inclusion of additional information within the 90-day notification, including specific details about all active consents? Are the proposed information requirements appropriate?

6. De-identification and deletion by default

An ADR may de-identify a CDR consumer's CDR data if:

- the CDR consumer gives a 'de-identification consent', which allows the ADR to de-identify some or all of the CDR data for general research and/or to disclose to others (including by sale)⁵⁴
- the ADR has a general policy of de-identifying redundant data and during the consent process the CDR consumer does not elect that their redundant data must be deleted, and the ADR considers it appropriate in the circumstances to de-identify rather than delete the redundant data.⁵⁵

If a de-identification consent is sought, then the ADR must state to the consumer that the data could be disclosed and sold to other persons, the classes of persons who might access that data, why the data would be disclosed and, if the ADR intends to use it for general research purposes, the kind of research to be conducted.⁵⁶ If an ADR intends to de-identify data when it becomes redundant, the ADR must state similar but fewer details to the consumer.⁵⁷

The CDR Rules set out the process for de-identification, including that the ADR must consider whether it would be possible to de-identify the relevant data to the extent that no person would be identifiable, or reasonably identifiable, from the data and any other information that would be held by any person following the de-identification process.⁵⁸

Consent Review Noting Paper

The noting paper did not include a proposal, but instead invited general feedback on the requirements and processes relating to de-identification and deletion of CDR data as they relate to consumer consent.

Stakeholders noted the CDR Rules relating to the de-identification of redundant data and de-identification consents are complex and overlapping. In addition to de-identifying redundant data, consumers can separately provide a de-identification consent to an ADR. Potential interactions between these mechanisms can lead to unintuitive and seemingly contradictory outcomes for

⁵⁴ CDR Rules 2020, r 1.10A(1)(e).

⁵⁵ CDR Rules 2020, rr 4.11(1)(e), 4.11(3)(h) and 4.16.

⁵⁶ CDR Rules 2020, r 4.15.

⁵⁷ CDR Rules 2020, r 4.17.

⁵⁸ CDR Rules 2020, r 1.17. This rule also requires to ADR to have regard to other relevant factors, including the De-Identification Decision Making Framework.

consumers. For example, a consumer could elect to have their redundant data deleted while separately providing a de-identification consent.

Additionally, some stakeholders considered the standard of de-identification required by the CDR Rules is difficult to achieve in practice and precludes data uses that are otherwise routinely employed to consumer data, including product development and maintenance.

The majority of submissions supported adopting a consent-driven 'deletion by default' approach to redundant data handling where an ADR will only de-identify a consumers CDR data where the consumer has provided express consent for the ADR to do so. These stakeholders considered this approach could simplify the consent process, generate greater consumer trust and reduce the risk of consumers not understanding when their data would be de-identified.

Proposed approach

We propose adopting a 'deletion by default' approach to redundant data handling. This approach would require ADRs to delete redundant CDR data unless the consumer has provided a de-identification consent in relation to that data. If a de-identification consent has been provided, data could be de-identified at any time, whether redundant or not. This approach is intended to address the complexity in the current CDR Rules by introducing a single consent mechanism by which a consumer can agree to have their CDR data de-identified.

The CDR Rules would ensure the consumer is able to easily able to withdraw a de-identification consent at any time and that ADR remind the consumer, via the 90-day notification, that a de-identification consent remains active (see also 90-day notifications section of this paper). ADRs would continue to be unable to bundle de-identification consents with other consents and would require the consumer to make an active selection to allow de-identification (see also bundling of consents section of this paper).

Consultation questions

17. Do you support a 'deletion by default' approach to redundant data handling?
18. Do you consider this approach will have a positive impact on consumer experience with the CDR, and on the privacy and security of a consumer's CDR data?
19. Do you consider this approach will have a negative impact on ADRs that seek to derive value from de-identified CDR data?
20. Do you consider the standard of de-identification in the CDR Rules is appropriate for the intended uses of data by ADRs?

7. Dark patterns

While the CDR Rules and standards extensively prescribe what must be done when seeking and withdrawing consents and authorisations, flexibility exists regarding how these requirements may be implemented. There are limited restrictions related to consent design. For example:

- For ADRs, the CDR Rules specify restrictions on ADRs seeking consent, including the maximum duration of a consent, the data minimisation principle, the types of consent that may be requested, and the use of CDR data in relation to identifiable persons.⁵⁹

⁵⁹ CDR Rules 2020, r 4.12. The equivalent rules for CDR representatives are 4.20F.

- For data holders, the CDR Rules prohibit data holders from making the process of withdrawal more complicated than the process for giving an authorisation,⁶⁰ and prohibit the inclusion in the authorisation flow of requirements, information, requests, or services beyond what is specified in the CDR Rules and standards.⁶¹

However, we note that it is still possible for otherwise compliant CDR consents to include undesirable patterns and interfaces that may undermine informed consent and consumer control.

Several proposals in this design paper would remove prescription and afford CDR participants greater implementation flexibility. While this is a desirable outcome, it may also increase the risk of implemented designs that undermine informed consent and consumer control. This risk could be mitigated by explicitly prohibiting undesirable design choices.

Design choices that undermine informed consent and control can be described as ‘dark patterns’, which is an emerging concept in privacy law and human-computer interaction. Dark patterns are described in the ACCC’s Digital Platform Services Inquiry as ‘[t]he design of user interfaces intended to confuse users, make it difficult for users to express their actual preferences, or manipulate users into taking certain actions’.⁶²

The CDR does not currently define or prohibit dark patterns. Dark patterns have been explicitly considered and prohibited in various other jurisdictions including the California Privacy Rights Act (CPRA), the Colorado Privacy Act (CPA), the Virginia Consumer Data Protection Act (VCDPA), and the European Data Protection Board. Existing Australian laws deal with misleading and unfair practices and the unnecessary collection of personal information. However, it has been suggested, including by the ACCC,⁶³ CPRC,⁶⁴ and OECD,⁶⁵ that these existing measures may not address a range of dark patterns.

Consent Review Noting Paper

The noting paper proposed a principle-based prohibition of dark patterns, which was broadly supported by stakeholders. However, feedback also included requests for further detail in the form of prescriptive prohibitions and/or examples of dark patterns. This was seen as necessary to aid further consultation, but also for any eventual rules, standards, and guidelines.

Proposed approach

The proposals in this paper build on feedback to the noting paper, as well as taxonomies from the ACCC’s Digital Platform Services Inquiry⁶⁶ and the OECD’s paper on dark commercial patterns.⁶⁷ We are considering principles-based requirements within the CDR Rules or standards to make unambiguously clear that dark patterns are prohibited in the CDR. This could include detailed examples within CX standards and guidelines of approaches ADRs must avoid, which may be amended or added to where appropriate and as the landscape of the CDR evolves.

⁶⁰ CDR Rules 2020, r 1.15(1)(c)(iii).

⁶¹ CDR Rules 2020, r 4.24.

⁶² ACCC, [Digital Platform Services Inquiry – September 2022 Interim Report](#), November 2022, p.67.

⁶³ ACCC, [Digital Platform Services Inquiry – September 2022 Interim Report](#), November 2022.

⁶⁴ CPRC, [Duped by Design](#), June 2022.

⁶⁵ OECD, [Dark commercial patterns](#), pp. 44-45, 2022.

⁶⁶ ACCC, [Digital Platform Services Inquiry – Interim report No. 3](#), pp. 56-67, September 2021.

⁶⁷ OECD, [Dark commercial patterns](#), p. 53, 2022.

Dark patterns refer to interfaces, choice architecture, or design patterns that undermine, impair, or subvert user autonomy, choice, and decision making. We consider the specific examples to avoid in the context of the CDR could include:

- **Nagging**, including the interruption or redirection of a user from an intended activity with the intention of guiding them towards an alternative and unnecessary selection or outcome. This could look like a pop up used to confuse a consumer into giving an unnecessary consent, or to distract them from the consent terms they are considering.
- **Obstruction**, where a process is made more difficult than necessary to discourage certain actions. This may include making withdrawing a consent or authorisation more difficult by including unnecessary steps, requirements, offers, or information that are intended to influence the user's choice.
- **Interface interference**, including the use of false hierarchies, the pre-selection of unnecessary options, the use of trick questions, and the privileging of certain options over others. This may appear as a button visually emphasising the choice to grant a consent or a consent request phrased in intentionally ambiguous terms, such as with double negatives, to make the outcome of the choice unclear.
- **Sneaking**, where relevant choices or information are hidden, obscured, or disguised from a consumer. This may include making information on fees, default permissions, or the handling of data difficult or unintuitive to access or understand.
- **Forced action**, where a user is coerced or required to do or allow something that is not necessary. This may include the granting of unnecessary consents or permissions, including by limiting the actions for an unnecessary consent to 'continue' or 'cancel', instead of a checkbox that a consumer can leave unticked and continue.
- **Scarcity cues**, where an unnecessary sense of urgency is created, based on the pretence that there is limited supply or time to act, with the intention of enticing a consumer to make a choice or complete an action. This could appear as an alert to warn a consumer that if they do not provide consent within a certain timeframe, an offer or incentive will be lost.

These categories could be accompanied by specific visual examples in the CX Guidelines to demonstrate how they may look in practice, as well as the range of ways in which these patterns might manifest in the CDR.

Consultation questions

21. Do you consider the inclusion of new rules or standards on dark patterns could be effective in mitigating the risk of ADRs designing consents that undermine informed consent and consumer control?
22. Are there specific dark patterns that you consider should be addressed within CX standards or guidelines?
23. Are there any further issues that should be considered in prohibiting the use of dark patterns?

8. Future work on consent

This design paper and the previous noting paper consultation have focused on consent-related changes that can help support a better consumer experience while maintaining key consumer protections. The initial scope has focused on ADR-side changes that minimise impacts on existing implementations. However, we consider there are also opportunities to improve CDR consents through examination of further topics, including data holder-side changes and other amendments to support future developments in the CDR. Based on internal analysis and community input to date, topics for further consideration could include:

- **Amending consent simplification**, such as simplified re-authentication/authorisation flows to extend the duration of an existing consent, as explored in a public workshop in 2020.⁶⁸ The simplification and augmentation of amending consent flows will also better support action initiation use cases.
- **Authorisation simplification**, which may review the information and interactions being presented in DH authorisation flows, such as account selection, and in anticipation of action initiation requirements.
- **Dashboards**, including a review of both ADR and DH dashboards to support simplification, consistency, action initiation, and the concept of ‘external consent management’ as recommended in the Future Directions Inquiry⁶⁹ and past [CX research conducted in 2019](#).
- **Multi-DH consents**, including a review of the need for a consumer to navigate and establish multiple consents to collect data from multiple DHs for a single service. This may consider expanded parameters that allow consent requests to be simplified or truncated where the service requires data from multiple DHs, and may also need to consider action initiation.
- **Principle-based requirements**, which could further explore the extent to which greater flexibility may be provided to CDR participants to design consent flows, provided key consumer experience outcomes are met.
- **Purpose-based consents**, which was consulted on by the DSB⁷⁰ and intersects with various Future Directions Inquiry recommendations, including the ‘CDR dictionary’, ‘industry-defined consents’, and ‘fine-grained authorisations’ concepts.⁷¹ Purpose-based consents will be technically possible with the introduction of FAPI 2.0, particularly Rich Authorisation Request functionality.⁷²
- **CX Monitoring**, including how the consent process can be better monitored, as recommended by the Statutory Review, and where further adjustments may be warranted. This may consider richer insight into CDR adoption, consent flow completion, and outcome realisation.
- **Action initiation**, which would consider a range of overlapping issues, including any further adjustments required to support action initiation in the CDR, such as the presentation of consents for actions; the disclosure of data to an action service provider; and revisions to

⁶⁸ DSB 2020, [Amending Consent Workshop](#).

⁶⁹ Treasury 2020, [Inquiry into Future Directions for the Consumer Data Right – Final Report](#), recommendations 6.22 – 6.24.

⁷⁰ DSB 2021, [Decision proposal 183 – purpose based consents](#).

⁷¹ Treasury 2020, [Inquiry into Future Directions for the Consumer Data Right – Final Report](#), recommendations 6.19 – 6.20, pp. 133-136.

⁷² D. Fett 14 November 2022, [FAPI 2.0 Security Profile](#) and T. Lodderstedt, J. Richer and B. Campbell 18 October 2020, [Auth 2.0 Rich Authorization Requests](#).

support switching use cases, where CDR consumers may be redirected to CDR participants with which they have no pre-existing relationship; and a review of notification requirements.

- **CX requirements for different types of consents**, including identification of opportunities for simplification and improvement of disclosures to accredited persons, trusted advisers, and insight disclosure consents.

Consultation questions

24. Do you support further work in relation to the above areas? Are there areas that should be prioritised?
25. Are there other issues, areas, or improvements that should be considered to improve CDR consents?