August 20, 2024

Adatree Response to CDR Rules (August 2024)

About Adatree:

Adatree, an Australian fintech at the forefront of the CDR. As a pioneer of the CDR since 2019, Adatree is now Australia's leading technology provider for Recipients, enabling many startups, enterprises and even the Australian government to access Open Banking & Open Energy.

Adatree was cofounded by former Tyro Payments and Volt Bank employees, Jill Berry and Shane Doolan in 2019. It has won multiple technology and leadership awards, including Best Open Banking Provider and Emerging Leader of the Year at the Finnies and the Australian Fintech Awards, as well as being a national finalist in the Telstra Best of Business Awards 2022. In early 2024 it was acquired by Fat Zebra, Australia's leading card-not-present payment processor.

Adatree responses:

Adatree is responding with commentary in relation to the topics or Rules that need bolstering or changes. If they are not noted here, then we support the changes.

Before commenting on the Rules, we would like to prominently raise one major gap that is in the Rules that must be addressed if the Minister wants to reach his publicly stated goals of increasing utilisation of the CDR and accelerate use cases and benefits.

1. Make Amendments for Usage of CDR and/or Derived Data

What is it? Derived Data is when new data is created from or based on CDR Data. Unfortunately derived data is currently treated as CDR Data and this is (in our opinion, based on hundreds of conversations with aspiring and actual CDR participants) the #1 biggest barrier to uptake and adoption of CDR.

Why this matters: Say for example you want to do an energy account switch. you consent and disclose the information you need to share for the service and find out you can get a better deal with Amber Electric, saving $1,096 a year. While the Recipient had my customer and electricity data (raw CDR data) to make the comparison, the data gleaned through the comparison – Amber Electric as the lowest cost provider with the associated savings amount – now becomes CDR data and is protected as such. This means that if you want to switch to Amber, you'll need to do that manually - outside of the CDR boundary. Practically speaking, someone would have to retype the data so it is outside of the CDR boundary.

Incredibly poor customer experience - inhibiting choice and competition: This is a particularly awful customer experience to meet the letter of the law, introduces friction and does not introduce any customer protections. If anything, consumers are disadvantaged by this because this is one extra step they have to complete to address cost of living issues and

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save money. CDR is the problem and barrier while also the solution. The service is not able to make the switch for you. To our knowledge, this isn't the process anywhere else in the world. This Derived Data is a major blocker for some of the most simple-yet-powerful Open X use cases – switching and comparison services – from going live.

CDR is meant to improve consumer experiences, but in this case, derived data makes Australians worse off. In the current rules, consumers can't switch to Provider X because the data that underpinned the suggestion for the switch can't be shared and must be deleted. .

TL;DR: this is the cancer clause of CDR and must go. This isn't new and everyone (DHs, ADRs, etc) want it gone. We as a community have been asking for this change for years. Please listen.

Impacts of doing this?

- **Consumers?** With switching and comparison use cases unlocked, this would have immediate benefits for consumers, saving them billions annually.
- **Data Holders?** No impact, no cost.
- **Regulators?** New Rule only. No new CX or data standards would be required. So it would have immediate applications and zero cost. What a "bang for buck" win!
- **Data Recipients?** Able to go live with comparison cases – whether an ADR, Rep or other access model.
- **CDR Ecosystem?** Immediate growth, adoption and trust.

Implementation options:

- Although preference would be to remove derived data from the CDR rules, we are also aware that this is in the legislative, not just the Rules. For the interest of time, this must be a Rules change, not waiting months or years for legislation. Onto Plan B.
- **Introduce use cases and/or principles where derived data doesn't apply**. Introduce a rule where Derived Data doesn't apply to the priority use cases, which are budgeting, lending and account switching. This precedent has been set to allow new disclosures for increased usage of data (Trusted Advisers, BCDC, Insights, etc). This solution isn't as helpful, but it's less contentious and very fast.
- Our recommendation for how to better implement the Data Holder ADI draft changes (Section 5 below) also positively impacts this opportunity for more utilisation and adoption.

This should be the highest priority of a Rules change since it can be effective immediately and fuels Minister Jones's priority use cases.

Now, back to the Rules commentary:

2. Nominated Representatives for Business Accounts

1. **Do you support the proposed rule change? Why/why not?**

Yes! There are so many use cases that can be realised with CDR business data, and a key reason they're not live yet is because banks require paper forms to nominate an individual to do a consent. Consent is always digital, but the paperwork required to facilitate the consent has been an unfortunate roadblock designed by Data Holders.
The latest CDR rules will remove this manual process to streamline business consents – which is fantastic news for anyone wanting to use business data.

2. **What benefits (if any) would the rule change have for your organisation, other organisations, and/or consumers?**

This rule essentially brings business consumers into the CDR scope for receiving data for the first time.

3. **What implementation challenges (if any) would your organisation, other organisations and/or consumers face as a result of the rule change?**

- **Consumers -** Businesses are consumers too! Assuming a business uses online banking, the removal of a paper form is excellent for simplifying their operations. If this does not happen, then business consumers are very disadvantaged and are limited by design (of Data Holders) to realise benefits of the CDR.
- **Data Holders -** There will be an impact to Data Holders who want to introduce an automated digital nomination process. But if they want minimal (or no) impact, they could enable all directors and/or people with Action access for online banking to consent.
- **Recipients of Business Data?** No implementation impact.

4. **What would be the impact of not proceeding with the proposed change?**

This will exclude and disadvantage all Australian businesses and leave millions of business owners worse off.

5. **Are there any other matters that should be considered when assessing the proposed rule change?**

- **Service level agreements.** We need SLAs that require notification of when a consent becomes effective after the request was made. This should be effective immediately (or 3 seconds max). If there is an online change and it goes to a mailbox and isn't automated or acted on immediately, then the change is as good as paper (read: not good).
- **Skipping nominations altogether.** The new rules allow banks to completely avoid the implementation of a nomination process. The Rules should explicitly say that Data Holders can avoid nominations as a process and should allow a Data Holder to allow all users with certain access levels (e.g. making payments) to be able to perform consents. This avoids the implementation step and immediately opens up eligible users to consent on behalf of business.
- **Clarifying the 'Simple and Straightforward' Process**: CX Standards must be designed and implemented to define the Must, Shoulds and Coulds of this. Data Holders have implemented this inconsistently and arguably with dark patterns, so this cannot be left openly. A CDR tenet is consistency of customer experience, so this should be implemented the same across all Data Holders, in terms of location to find the setting and implementing it. This would ensure a uniform and aligned experience with little room for interpretation. Adatree has proposed this in the DSB DP350 too.

- **Clarifying wording around non-individual vs partnership**. Clauses (c) and (d) don't differentiate between partnerships and non-individuals. If rules apply to both, their application should be clearer, especially as it relates to account and/or entity types. Do you mean partnerships as an entity structure or signing authority? Partnership is less common than trust, company, sole trader, or others, so we question why this is specifically called out.

3. Bundling Consents, Pre-Selection and Bundling Receipts

We absolutely support this. No further clarification is needed for what is reasonably required or how to adhere to the data minimisation principle - this is the role of a knowledgeable intermediary and/or legal advice, not for the regulator to determine in its prescriptive implementation. Please make them effective as of the date of the Rules signing.

This doesn't impact Data Holders and only Data Recipients will have the burden of implementation. They may implement them sooner or later, depending on their own commercial consideration. Consumers will be better off by implementing this, but this won't move the needle on CDR utilisation - there are bigger issues to deal with to get people and companies into the CDR funnel.

4. Deletion of Redundant Data as Default

1. **Do you support the proposed rule change? Why/why not?**

We support this rule change. Why this matters: This shift is critical for the principles that underpin the Consumer Data Right – reducing the amount consumer data being shared when it isn't necessary. By making deletion the default treatment for redundant data, the choice of what a consumer shares and how it's handled becomes more explicit.

2. **What benefits (if any) would the rule change have for your organisation, other organisations, and/or consumers?**

We already have this as the default but it would increase trust with the CDR (assuming Treasury implements its long awaited communications plan) if people understand that deletion is the default.

3. **What implementation challenges (if any) would your organisation, other organisations and/or consumers face as a result of the rule change?**

This doesn't impact Data Holders and only Data Recipients will have the burden of implementation.

4. **What would be the impact of not proceeding with the proposed change?**

This isn't a contentious change, but there will be no consumer harm or implementation impacts by not proceeding with this. It is, however, best practice.

5. **Are there any other matters that should be considered when assessing the proposed rule change?**

For the next round of rules, de-identification should be considered. De-identification is very challenging right now, if done correctly. Adatree commissioned proprietary research with CSIRO to understand how to implement the de-identification framework with financial data in

the CDR, and the implementation is very complicated. Unless a company had researchers experienced with data cleansing with this process, then the data arguably is still identifiable. It makes deletion the only option and makes de-identification too challenging - especially when this requirement isn't needed with screen scraping, bank feeds, data brokers or other data ingestion means.

5. Data Treatment for ADI Data Holders

1. **Do you support the proposed rule change? Why/why not?**

While we are supporters of making CDR data more usable practically, we are not supportive of this rule change as is. This draft rule creates major inequalities in the market. With this as is, ADIs could receive data through the CDR and hold it as normal data, without any of the CDR standards that protect that data-handling for the consumer. The data controls change it to banking protections instead of CDR – which means that it could be sold, shared anywhere, marketed to, etc.

This would be a total double standard in market. Data Holders that are ADIs can take CDR-data, make it non-CDR data and hold it as they would a Data Holder. If there is a Data Holder that isn't an ADI (even APRA-regulated ones!), this concession doesn't apply. It should apply to all Data Holders or not at all. This benefits banks but should benefit all Data Holders. If the ABA has emphasised security and compliance, it should apply equally to all Data Holders, those with licensing outside of ADIs, be use case specific or make an equal playing field. This disproportionately favours the banks when data treatment and 'off-ramps' should be consistent across the board.

This is what would happen if this is implemented as is:

- **Consumers** would lose their Privacy Safeguards and right to deletion.
- **Data Holders** could create the super-app to access all banking and energy data through CDR and treat it as BAU. The advantage to being an ADI would blow other accredited non-bank recipients out of the water.

2. **What benefits (if any) would the rule change have for your organisation, other organisations, and/or consumers?**

This would help clients that are banks and disadvantage all others. While we agree with the sentiment of making data more usable, making it exclusive to banks isn't the correct way forward.

3. **What implementation challenges (if any) would your organisation, other organisations and/or consumers face as a result of the rule change?**

- **Consumers**? It's sending mixed messages to consumers and will likely confuse them about what a Data Holder is asking them to do, and why. Consumers should question the absence of the ADR Privacy Safeguards.
- **Data Holders?** This would introduce a new election process to make it non-CDR Data and change the data treatment. This is only applicable to ADRs, not Reps.

- **DH software providers?** The burden of this change will likely fall on core banking providers – a costly and resource-intensive adjustment. This could be avoided with a change to rule treatment instead of a new nomination.
- **Accredited Data Recipients?** This would introduce new capabilities for a new consent if they service ADI ADRs.

4. **What would be the impact of not proceeding with the proposed change?**

Data Holders wouldn't be any worse off than they are right now but adoption wouldn't accelerate at the pace that it should.

5. **Are there any other matters that should be considered when assessing the proposed rule change?**

Instead of going forward as is, Treasury should **expand the classes of Trusted Advisers** to include those with an ACL, AFSL and other considered licensing or accreditation. This would solve the issue not only for banks but also for the future non-bank lending sector and other licensed and trusted organisations - future proofing CDR implementations.

6. More Supporting Party Information

1. **Do you support the proposed rule change? Why/why not?**

We don't support this rule change. Many changes are about streamlining information (bundling consents, pre-selection, bundling receipts, etc) but this introduces friction, increases cognitive load and doesn't introduce any benefits. It also doesn't solve an existing problem. This information is available in the CDR Policy and no consumer has ever asked for more information about this.

7. Increased obligations for CDR Representatives

1. **Do you support the proposed rule change? Why/why not?**

Yes, we do support it, but **it has to go further**. Having a consistent user experience across services is important for consents and the overall success of CDR. This change will align Representatives to ADRs - maturing the CDR.

2. **What benefits (if any) would the rule change have for your organisation, other organisations, and/or consumers?**

CDR Representatives are the weakest list in the CDR ecosystem, which has the least amount of ACCC enforcement and the highest risk of a breach of data controls, protections or handling. Having a mandated CX Standard apply to them is a small step in the right direction.

Consumers will benefit if CDR Representatives work with Principals that offer compliant white-labelled consent dashboards and consent creation processes; otherwise they are futile.

3. **What implementation challenges (if any) would your organisation, other organisations and/or consumers face as a result of the rule change?**

- No consumer of Data Holder impacts for implementation.
- There should be no CDR Principal changes as they should already have implemented a compliant UI as if the CDR Representative is an ADR. This is best practice and doesn't need a Rule to implement this. Adatree would have no additional work for implementations for our customers.

4. **What would be the impact of not proceeding with the proposed change?**

Weaker consumer awareness and information.

5. **Are there any other matters that should be considered when assessing the proposed rule change?**

This only works if there is adequate enforcement of the CDR Principals UI and CX guidelines for CDR Representatives, and the Principals doing the right thing within the Representative and CDR Framework. The quality of CDR Principals ranges greatly, to the extent that some have been publicly named and shamed for poor practices which undermines the entire framework. It is currently anti-competitive without a level playing field.

The Rules should add these obligations for Representatives and CDR Principals:

- The ACCC should have the right to directly audit CDR Representatives.
- Consequences should be very strict for CDR Principals found to be operating outside of the Rules.
- Third Party Management Frameworks should be mandated for the Principal and reviewed initially and regularly by the ACCC and OAIC. Frameworks should outline the risk appetite of the Principal and what and how exactly they collect and analyse information to ensure they are meeting the CDR Rules. This applies to Principals with CDR Affiliates - considering the risk of CDR Representatives is much higher, this must be in place for all CDR Principals.
- The regulators should have very strong enforcement mandates and mechanisms for Principals and their CDR Representatives.