

12 September 2024

Ms Louise Staker
Director
Data and Digital Policy Branch
Markets Group
The Treasury

By email: CDRRules@treasury.gov.au

Dear Ms Staker

Response to the Consultation on the Consumer Data Right (CDR) Rules

COBA appreciates the opportunity to provide feedback on Treasury's exposure draft of the Competition and Consumer (*Consumer Data Right*) Amendment (2024 Measures No.1) Rules 2024 (the 'August 2024 draft rules').

COBA represents Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$178 billion in assets and is the fifth largest holder of household deposits. Customer owned banking institutions account for around two-thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

Key points

COBA supports part A of rule 2.1 on nominated representatives for its simplicity and accessibility.

COBA does not support part B of rule 2.1 if it requires creating or amending an online dashboard. We believe this could be done with simpler, cost-effective solutions like online forms. Our members only have a few business banking customers relative to the high costs and significant effort required for dashboards. Our members request that if a dashboard is required that the implementation be extended to 18 months.

COBA requests a 12 to 18 month deferral for CDR representative principals (rule 2.3) to comply with new standards, instead of the proposed 6 months, due to the need for contractual and compliance adjustments.

COBA endorses the Rule 1.7 change to the definition of Secondary Users to include a temporal element, cautioning against new specific rules that could necessitate reworking existing solutions.

We note the draft rules outline proposed changes to support the consent review and operational enhancements. Our detailed feedback is noted in **Appendix 1**.

COBA and its members have been involved and engaged in consultation meetings on the August 2024 draft rules with the Treasury including attending the CDR Consent and Operational Enhancement Amendments Stakeholder Forum held on Friday 23 August 2024. COBA also attends the bi-monthly CDR Implementation Engagement Forum meetings, with the latest meeting held on 2 September 2024 briefly discussing the August 2024 draft rules. It is important to note that most, if not all our members are data holders and some plan to be data recipients in the future.

Thank you for taking the time to consider our feedback.

Please do not hesitate to contact Neha Chopra, Policy Manager (nchopra@coba.asn.au) if you have any questions about our submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lawrence', is positioned above the printed name.

MICHAEL LAWRENCE
Chief Executive Officer

Appendix 1: Detailed Feedback

CONSENT REVIEW

1.1 Allowing a data recipient to bundle CDR consents, so that consumers can give multiple consents with a single action.

COBA supports Treasury's proposal to allow a data recipient to bundle collection, use and/or disclosure consents, where they are 'reasonably needed' for the provision of the requested good or service. COBA also supports Treasury linking the term 'reasonably needed' to the data minimisation principle. COBA believes it will simplify the consent process, provided the term 'reasonably needed' in this context explains to the consumer why the datasets are critical for the service.

1.2 Allowing a data recipient to pre-select the elements of an individual consent that would be reasonably necessary for the data recipient to provide the good or service.

COBA supports Treasury's proposal to allow data recipients to clearly indicate the consent elements needed for a service to function. This ensures customers know that only necessary data sets will be collected and used for service enablement.

1.3 Simplifying the information a data recipient is required to provide to the consumer at the time of consent.

COBA supports Treasury's proposal to simplify the information that data recipients must provide to consumers at the time of consent. This proposal is supported because data recipients would only need to inform consumers that they can withdraw their consent at any time. Detailed information on how to withdraw consent and the consequences of doing so would be included in the CDR receipt.

1.4 Allowing a data recipient to consolidate the delivery of 90-day notifications to reduce consumer notification fatigue.

COBA supports Treasury's proposal to clarify a data recipient can consolidate the delivery of 90-day notifications for active consents as it reduces notification fatigue.

1.5 Simplifying the obligations in relation to CDR receipts.

COBA supports Treasury's proposal that the Standards will require a CDR receipt to include the information as outlined in the design paper. This proposal will simplify the content of CDR receipts and improve consistency. Currently, the scope of the CDR receipt requirements is broad as it encompasses specific details about the consent as well as 'any other information' provided to the consumer at the time of consent.

1.6 Requiring a data recipient to provide consumers information about all supporting parties who may access the consumer's data at the time a consumer gives a consent.

COBA supports Treasury's proposal to align all information requirements relating to supporting parties who may access the consumer's data. The rule change would also mean data recipients would need to provide further details about outsourced service providers.

1.7 Requiring data recipients to delete redundant CDR data unless a consumer has given a de-identification consent.

COBA supports Treasury's proposal to require accredited data recipients (ADRs) to delete redundant CDR data by default unless the consumer has provided a de-identification consent in relation to that data. The change would reduce collection of unnecessary and outdated data.

COBA requests Treasury clarify the meaning and purpose for de-identification consent (specifically in relation to any marketing activities) for consumer data to ensure consumers can make an informed decision.

1.8 Requiring a data recipient to advise consumers of the marketing activities they will undertake because of a direct marketing consent.

COBA supports Treasury's proposal to require a data recipient to advise consumers of the marketing activities they will undertake as a result of giving that direct marketing consent for data privacy and transparency reasons.

2. OPERATIONAL ENHANCEMENTS

2.1 Nominated representatives.

a) provide a process for consumers to appoint a nominated representative that is both prominently displayed and readily accessible, and simple and straightforward to use and

b) offer an online process for allowing online administrators to be appointed as nominated representatives.

Our members support Part A of the proposal to provide a simpler and more accessible process to appoint nominated representatives.

Generally, our members do not support Part B of the proposal to offer an online process for appointing online administrators as nominated representatives if it requires explicitly creating or amending an online dashboard or portal. However, we would support this change if it was clear that simpler and more cost-effective ways such as online forms could meet this requirement.

Many of our members emphasised the substantial cost, overheads and build time with digital and open banking providers as most of our members use several external providers. The most recent example being the updating of dashboards to allow for amended consents which required intensive collaboration for members' IT teams, digital offering vendors and open banking vendors in a 3-month period with wireframes constantly changing or being clarified in less than a week before the regulatory due date.

If a dashboard or portal need to be implemented, it would require members to make changes to multiple systems such as:

- core banking systems (host)
- open banking systems (external providers), and
- changes via the digital banking system (external providers).

This time, effort and costs would not be worth any benefit to the small percentage of business members using open banking.

COBA currently understands the intent is that offering an online process for administrators requires the process to be online and the format does not matter as long as it meets the requirements of being 'prominently displayed and readily accessible, and simple and straightforward to use.' Also, our members suggest the DSB consider updating the proposal in DP350 if the Treasury was to indicate a dashboard or portal concept requirements to ensure consistency through wireframes.

If it is confirmed that an online form is acceptable, our members believe a lead time of at least 12 months from the point that rules, legislation and guidelines are finalised is appropriate. Our members currently use a mix of paper based and automated systems to add and remove nominated representatives and this time period would be required for the development of any online form. However, if there is a dashboard requirement, our members suggest an extended lead time of 18 months is necessary. This additional time is necessary as members would need time for development but also converting business member data to a digitally held form to be able to be used in the dashboard.

If a dashboard with near real time processing is required, COBA would highlight the unintended consequences and poor implementation feasibility of this change. The length of time and cost of change would be significant as there are technology limitations to implementation. Most customer-owned banks will not have the data for a nominated representative in the online system. Implementation of automated systems to do so will need changes to core, digital and open banking systems to be able to capture the data and present in it the open banking system dashboard. A bank would need to work with these three system providers and go through testing to implement the dashboard proposal. Our members would like to emphasise the substantial cost, overheads and build time with digital and open banking providers as most of our members use external providers. Our members have provided data that customers that are individual members with active consents ranges from 0 to 145 and 0 to 20 customers are nominated representatives with active consents. In terms of estimating costs, one member who already has a dashboard has noted it will cost \$50k-\$100k to meet this requirement, two members suggested a cost in the range of at least \$100k-\$150k whilst another estimated costs as exceeding \$200k.

2.2 Expanding the circumstances in which accredited ADIs can hold CDR data as a data holder

Q/ Is the requirement for the ADI to provide information about the manner in which they propose to treat the data adequate to ensure the consumer has the information they need to make a decision to allow data to be held as a data holder rather than an ADR?

COBA agrees that this requirement should be clarified on the equal responsibilities and obligations of the expanded circumstances for accredited ADI.

Q/ Should the ADI be required to advise the consumer that the data will be subject to the Australian Privacy Principles?

COBA agrees the ADI should be required to advise the consumer that the data will be subject to the Australian Privacy Principles.

Q/ Are the new circumstances sufficiently broad to support key use cases for accredited ADIs receiving CDR data?

COBA supports the proposed changes intended to expand use cases for ADIs that have already, or desire to, become ADRs.

Q/ Should these broadened circumstances be replicated for energy retailers (see existing clause 9.2, Schedule 4) and for non-bank lenders?

COBA notes this does not apply to our members.

2.3 CDR representative arrangements - A civil penalty provision would apply to a principal if their CDR representative fails to comply with these Standards. Do CDR representative principals (recipients) consider a deferral of these obligations by 6 months is sufficient to make adjustments to their current practices, where necessary?

COBA welcomes the decision of not proceeding with the original proposal requiring “data holders to provide account holders with an online service to block CDR data being disclosed to an ADR in response to data sharing requests made by secondary users.” This requirement is complex to implement and offers minimal benefit to account holders.

Separately, COBA supports the Rule 1.7 Definition change of Secondary Users to introduce a temporal element. This was always assumed by members and has been implemented. As there are already existing implementations to check eligibility temporally, members are cautious of new specific rules (or ACCC rule interpretations) that explicitly state how this should be enacted that would lead to unnecessary rework of existing solutions. To this end, members request that wording such as the consultation papers “where an account holder is no longer eligible in relation to an account, any existing secondary user instructions would no longer have effect” not be used or adopted.

COBA members advise that these specific changes would need a 12 to 18 month deferral instead of the current 6 months. The biggest obstacle CDR principals (and CDR representatives) will see are contractual uplifts and potentially some compliance audit uplifts (depending on the CDR principal's risk appetite before and after the change).

2.4 Simplifying Data Holder requirements - Secondary users

COBA welcomes the decision of not proceeding with the original proposal requiring “data holders to provide account holders with an online service to block CDR data being disclosed to an ADR in response to data sharing requests made by secondary users.” This requirement is complex to implement and offers minimal benefit to account holders.