

Frollo Australia

Consumer Data Right draft rules: Consent Review and Operational Enhancements

Submission

September 2024

## Summary

Frollo recognises that changes are required to achieve the stated goals of CDR. These changes must support the rapidly developing data-driven economy in Australia and keep pace with consumer needs.

We support the proposed changes to consents and receipts as they will enhance the consumer experience and remove steps that make the consent process longer. The implementation of changes such as consent bundling being voluntary would not create a burden on those who do not wish to implement this. Frollo will respond to DP350 on the standards related to consents.

Please note, two substantial inhibitors to CDR success that have already been highlighted many times before and require urgent attention are:

- removing or adjusting derived data from the definition of CDR data, or introducing use cases where derived data is not to be treated as CDR data. Without such a change, the Rules risk limiting the true potential of the CDR by hampering the ability of any ADR, affiliates, representatives, or accredited data holders to develop new offerings built with CDR data; and
- improvements to the consent authorisation process to help prevent consumer drop-off in the consent journey due to its complexity or technical issues. Waiting for infosec improvements and app2app flows may take too long to be implemented and result in consumers and participants losing trust in CDR whilst waiting.

# 1 Proposed changes to the consumer consent process

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

Frollo supports the bundling of CDR consents to enable consumers to give multiple consents with a single action. This move is a welcome step to streamline the consent process. Importantly, consumers should be provided with sufficient information in a simple and accessible manner to provide informed consent. Since an ADR may choose not to bundle this change should not be a burden

## 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

Frollo supports this proposal, as it enhances consumer experience and reduces the risk of consumers failing to complete consents due to 'consent fatigue'. This is also useful in consent renewals.

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

Frollo supports this change and agrees the timing of this information at time of consent does not benefit the consumer.

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

Frollo supports this change.

## 1.5 Simplifying the obligations in relation to CDR receipts

Frollo supports this change.

## 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 consent

Frollo supports this change as it provides important transparency at the time of consent in a clear manner.

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

Frollo supports this change to address the confusion that consumers often experience when processing the difference between deleting data and de-identifying data, which would be removed by the introduction of the 'deletion by default' position.

The main issue with deleting CDR data is the treatment of derived data as this in itself can be complex and costly. As mentioned in our summary it is a significant inhibitor to using CDR data.

The rules and standards for de-identified data should also be examined as the current standards are almost impossible to achieve, leading to cost and complexity.

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

Frollo supports this change as it helps engender trust in the CDR ecosystem by providing transparency on an important concern of consumers today.

## **2 Proposed operational enhancements**

### **2.1 Nominated representatives**

Frollo supports the CDR Rule changes to require data holders to provide a simple process for non-individuals to appoint nominated representatives and to offer an online process for account administrators with online access to an account to be appointed as nominated representatives.

Without such a change it would be very difficult for business consumers to participate in CDR services.

To facilitate this, Frollo also suggests that the Draft Rules deem any person who has administrative authority over an account to be able to exercise rights over CDR Data.

This should allow CDR participants to rely on existing processes to provide authority to deal with CDR Data on behalf of a party who is not an individual. 'Deeming' those with administrative authority as nominated representatives would reduce operational and technical costs for data holders, and enable them to more quickly implement system changes. Something akin to what was done for joint accounts. This would also reduce the risk that those seeking to appoint online administrations turn to alternative solutions such as screen scraping, which can be completed in a more timely manner.

If the suggestion above is found to be suitable an initial phase may not need a 12 month timeline.

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

Frollo supports the broadening of the existing circumstances in which an accredited ADI can hold CDR data as a data holder, rather than as an Accredited Data Recipient (ADR) in the circumstance where it is both. It is a step in the right direction and provides a workable solution to the practicalities of how ADIs operate.

This change would also benefit other Data Holders who are not ADI's.

### **2.3 CDR representative arrangements**

Frollo believes the current and proposed CDR representative rules are onerous and only serve to place the compliance burden on the principal.

### **2.4 Simplifying data holder requirements - secondary users**

Frollo supports the proposed changes as we have not seen consumer interest in this.

### **2.5 Exempting energy trial products from the CDR**

Frollo does not have any specific views in relation to this issue.

### **3 Other Proposed Changes**

Whilst the explanatory materials contain some examples of how the Draft Rules would work in practice, Frollo does not believe these provide sufficient clarity. The explanatory notes and guiding principles should include further examples and scenarios to illustrate the practical application of the Draft Rules. Alternatively more FAQ's specific to the rule changes should be created.

Taking key use cases as a guide would be helpful.

## 4 Further recommendations to improve the effectiveness of and participation in the CDR

### 4.1 Derived data

Under the CDR Rules, derived data includes data wholly or partly created from or based on CDR data. It includes materially enhanced information, being data about the use of a product that has become significantly more useful as a result of analysis or insight. Derived data is treated as CDR data. This means that the obligations relating to CDR data infect an overly broad range of data.

The treatment of derived data as CDR data is an impediment to the overarching purpose of the CDR, as it creates complexity in classifying data, and requires careful consideration of whether data that has been transformed to various degrees still constitutes CDR data. Generating new information that can provide new services should be encouraged and not treated as a problem disincentivising participants.

Instead of protecting consumers, this has had an unintended consequence of limiting the ability and incentive of CDR participants to innovate and provide new offerings. By attaching the same obligations to derived data as apply to ‘primary’ data, the stringent sharing and consent requirements can act as a disincentive for data holders and data recipients to develop products and services that are built with the CDR data.

We believe many of the concerns with the current treatment of derived data could be addressed in two key areas:

- removing derived data from the definition of CDR data.<sup>1</sup> This would provide clarity for CDR participants and allow for freer experimentation with new products and services. This would provide greater certainty about what data is covered by the CDR, and would also remove the (arguably onerous) obligations on CDR participants to ensure derived data complies with the CDR Rules.
- introducing use cases or classes of derived data that are not to be treated as CDR data. This would allow for more tailoring and targeting by providing exemptions for certain types of derived data. Exemptions could be provided for derived data thought to be low-risk, or for priority use cases, such as products or services related to financial insights, budgeting, lending, or energy comparisons and switching.

### 4.2 Consent authorisations

Frollo has been a strong advocate of exposing the issues with consent drop off’s in the consent authorisation stage.

While we acknowledge the efforts made to streamline the consent process (outlined in proposals 1.2-1.5 above), further enhancements are needed to ensure consumers are not abandoning the authorisation process due to its complexity or easily solvable technical issues.

In particular, three solutions would allow entities to better understand, and potentially build product experiences to address this issue:

- public reporting on rates of consumer drop-off during the consent authorisation process. This could include reporting on the stage in the process in which drop offs occur, as well as rates of successful One-Time Password (OTP) delivery. This may be best best achieved by mandatory reporting requirements on data holders; and

- requiring an overall level of successful consent authorisations. Today the range of consent drop offs or failures can be between 5-65%. This is just too broad a range for there not to be issues that can be addressed.
- including further guidance and wireframe examples in the CX Guidelines of more simplified, user-friendly consent authentication flows, including options for app-to-app authentication and minimising redirects to different platforms/user interfaces, which can increase consumer cognitive fatigue. These disconnected flows are causing problems.