18 May 2022

Secretariat
Statutory Review of the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

By email: CDRstatutoryreview@treasury.gov.au

Dear Ms Kelly PSM

RE: Statutory Review of the Consumer Data Right

Chartered Accountants Australia and New Zealand, CPA Australia, and the Institute of Public Accountants (IPA) welcome the opportunity to respond to the consultation paper on the Statutory Review of the Consumer Data Right (CDR).

As key participants in the financial sector, our members are well placed to support and drive the adoption of the CDR across the Australian economy. We acknowledge that the CDR can help drive Australia to be a world-leading Digital Economy by 2030. This view is reflected in commentary from other jurisdictions which consider the intent and ambition of the rollout of the CDR in Australia as leading the world.

What international commenters have not yet observed are some of the flaws emerging in Australia as consumers seek to utilise the CDR in banking. Primarily, these flaws are the 'poison pill' effect of derived data and the unreasonable costs of becoming and complying with the ever-changing framework for a data holder or accredited data recipient (ADR).

We provide input to this statutory review to build the case for a pause on the expansion of the CDR. We recommend that Treasury resources be redirected to analysing the current usage of CDR pipelines to ascertain if the framework does, in fact, empower consumers and drive innovation and identify and address fatal flaws.

Responses to the questions raised for consideration are included in Appendix A.

On behalf of the undersigned, to arrange a time to discuss our comments and to address any further questions, please contact Karen McWilliams at Karen.McWilliams@charteredaccountantsanz.com.

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy and Professional Standing
Chartered Accountants Australia and New Zealand

Gary Pflugrath FCPA
Executive General Manager
Policy and Advocacy
CPA Australia

Vicki Stylianou
Group Executive Advocacy and Policy
Institute of Public Accountants

Appendix A

We provide the following responses and support the emerging consensus for a pause on the expansion of the CDR until this review is complete and the framework refined.

Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate the economy-wide expansion of the CDR?
We consider the objects remain fit for purpose to facilitate the expansion of the CDR.

Do the existing assessment, designation, rule-making and standard-setting requirements of the CDR framework support future implementation of the CDR, including government-held datasets?

We consider that there are several shortfalls. Of particular concern is how the tasks to be undertaken by the Minister prior to the designation of a sector under the *Competition and Consumer Act 2010* (Cth), 56AD are delegated to participants of that sector.

In the recent Treasury paper (the Paper) for assessment of non-bank lending for designation, the Treasury made several observations and proposals. Even though Treasury is best placed to access and compile statistical data on any given sector, such data was noticeably absent from the Paper.

For example, it is accepted by participants in the CDR regime that the cost of accreditation for a data holder, and the cost to maintain that accreditation, is beyond the resources of smaller operators. While this Paper acknowledged that 'many ACL holders are smaller operators', no statistical data on the breakdown of the size of operators in this sector was provided. To mitigate the cost burden for smaller operators, the Paper proposed setting a *de minimis* threshold, whereby operators under that threshold could choose, rather than be mandated, to seek accreditation to be a data holder yet provided no statistical data for a basis on which to set such a threshold.

Without statistical data on a sector under assessment, it is unclear how the Minister could assess the impact of a sector designation on its participants or whether the designation is in the public interest.

As key participants in the financial sector, in our response to the Paper we highlighted the difficulties that arise if some of a consumer's financial service providers are mandated as data holders while others are not. Such complexity, for example, would have had a significant negative impact during the recent COVID pandemic when our members were instrumental in enabling consumers to access the various government support packages, by drawing together the complete financial status of their clients.

Pertaining to the rule-making and standard-setting process, we consider there is a shortcoming in the absence of regular reviews being undertaken to ensure the standards being set do enforce the rules as written. In the standards for consent, where Subdivision 4.3.1, 4.9(d) of the Rules requires consent to be specific as to purpose, the CX Standard only suggests data recipients display the purpose: 'Data recipients **SHOULD** explain the purpose of generating the insight'.[1]

[1] Consumer Data Standards; Consent Standards, accessed 16 May 2022; https://consumerdatastandardsaustralia.github.io/standards-staging/#consent-standards

Irrespective of the processes followed to assess, designate, make rules and set standards, each and every change increases the complexity of the regime causing potential participants to postpone accreditation and participation. For existing participants, as a new sector is designated creating the need to make more rules, and set or reset standards, additional cost is incurred to maintain compliance, even though they may not engage in a newly designated sector.

For our members, additional costs are incurred to adapt software and processes as new sectors are designated. They need to continue to receive accounting data, now derived from CDR data, for their client's providers in banking, energy, telecommunications and more.

Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit consumers?
From our engagement with ADRs that offer products and services in the CDR regime, it appears that the current suite of innovative products is focused on enabling data holders and accredited persons to undertake accreditation, rather than products and services to benefit consumers.

It will remain difficult to build products and services exclusively powered by CDR data while rules and standards for each sector vary with respect to, for example, exemptions from seeking accreditation as a data holder. Consequently, products and services will need to continue to be able to capture consumer information from CDR channels, screen scraping and other means.

We recommend that sector agnostic rules and standards be the primary intent and that barriers to sectors are addressed with different mechanisms. For example, as the cost to be a data holder is prohibitive for smaller operators, a government body could stand as a data holder for these operators to plug into and participate in the regime.

Could the CDR statutory framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?
The requirement in the framework for data holders to provide an online service to directly disclose a consumer's data in a human-readable form to the consumer satisfies one of the four key principles of implementation. That is for the CDR to be consumer focussed.

We would be concerned if the framework moved to provide direct-to-consumer information in machine-readable form and, like our members, consumers would need to invest in software to decrypt encrypted data. Making the 'direct-to-consumer' channel too complex such as requiring encryption during transfer, will inhibit the use of such channels by consumers. If the direct-to-consumer channel is too complex or costly for a consumer to utilise, we would consider that complexity a fatal design flaw.

It is not the role of the CDR to make decisions on behalf of a consumer in how they use their own data, but to facilitate a consumer accessing their own data safely, efficiently and conveniently. How a consumer subsequently uses their data and with whom they decide to share their data with is not in the scope of the CDR regime.

Are further statutory changes required to support the policy aims of CDR and the delivery of its functions?

1. We recommend removing the definition of *directly or indirectly derived* data from the *Competition and Consumer Act 2010* (Cth) 56AI – Meanings of CDR data.

   It is unclear why Australia has chosen to extend the definition of CDR data to derived data, as this is creating barriers to participation to avoid the 'poison pill' effect. In consideration, that

   - only an accredited person can receive CDR data direct from a data holder.
   - any, and all, other participants can only receive consumer data from an ADR that, by default, has been altered in some form within the ADRs system.

   An unintended consequence of derived data is that professionals and organisations who provide services outside of the CDR ecosystem are forced to invest in new systems and processes and participate in the CDR ecosystem to continue providing the same services. Where clients of our members provide consent to their online accounting platform to receive their bank data through a CDR channel, those clients will then need our member to join the CDR ecosystem to be able to access the required accounting data to deliver the service they are engaged to provide.

2. We recommend embedding the privacy protections considered necessary for the CDR regime over and above existing privacy protections in the *Privacy Act 1988* (Cth).

   Placing privacy protections into legislation not related to privacy not only increases the complexity of that legislation but creates a risk that people seeking to understand how the privacy of their data transmitted through CDR channels is protected in the *Privacy Act 1988* (Cth) will potentially consider that none exists.

3. We recommend moving to a government platform with a single dashboard for consumer consents.

   Currently, the framework requires each data holder and each ADR to provide the consumer with a unique dashboard to manage their consents. This means consumers will have to manage upwards of eight unique dashboards. Adding to the number of dashboards is the variance between each dashboard, as the standards do not dictate the format, the process flow or the information that must be displayed on a dashboard.

   We seek that consideration be given to moving to a single consumer dashboard and for that dashboard to be held on a trusted government platform such as mygovid.gov.au.