



Does the existing statutory framework support the evolution of the Consumer Data Right?

May 2022

EY response

Statutory Review of the Consumer Data Right

EY proudly provides support to the agencies delivering Consumer Data Right (CDR), participants within CDR and third party service providers involved with CDR. This support gives EY a unique perspective of the challenges and opportunities faced by CDR. EY is a strong believer in the benefit and future of the CDR and its place in the wider digital economy.

This response includes EY responses to questions one, two and three.



Mark Nixon
EY Federal Government Leader

Introduction

The Consumer Data Right is the key to creating a leading digital economy and society by 2030

The Consumer Data Right (CDR) has the potential to evolve beyond the original program intent of enhancing consumer transactions, products and services by providing consumers with greater access to and control over their data - the CDR represents trust in the digital economy with its rigorous accreditation, technical stability and security and robust legislation. Beyond enriching business and consumer transactions, the CDR has the potential to apply to government data sets, incorporate big data and enable the rapid delivery of Digital Identity to redefine consumer and citizen experiences.

The CDR has been operational for just under two years and, whilst still in its infancy, has achieved great success in the banking roll out with more than 99% market share of retail banking consumers represented by 113 active data holders and brands in the CDR ecosystem.

Realising the benefits of the CDR is contingent on a thriving CDR ecosystem, with data holders (DH) providing datasets, data recipients (DR) providing compelling and useful products and services, and consumers providing consent to utilise their data for the products and services. Currently banking data is available, some services are provided although there has been limited consumer uptake. Without all three components, the benefits of CDR will not be realised when they are needed most. The economy is coming into a period of high CPI, cash rate increases and the prospect of an economic downturn. A flourishing CDR will help to minimise and manage an economic contraction.

The current cross agency delivery of the CDR, to this point, has delivered admirable results for the CDR program and by extension, the digital economy. The focus has been on establishing the foundations of the CDR including the policy, regulatory frameworks, standards, privacy, technology delivery and operations. In order to drive the CDR to the next strategic horizon and towards the Australian Digital Economy vision, to

create a leading digital economy and society by 2030, appropriate focus on scaling the ecosystem with increased velocity in technology delivery, service delivery, independence and DR and consumer uptake is necessary.

The ability to scale the CDR quickly requires removing as much friction as possible between key CDR technical stakeholders, especially where this friction impedes technology delivery velocity. To achieve this, it is logical that standards and design setting should be co-located and incorporated into the technology delivery function of the CDR - technical design and delivery should go hand-in-hand. This not only increases speed to market but improves efficiencies in delivery and removes the need for interpretation and consultation across the Data Standards Body (DSB) and Australian Competition and Consumer Commission (ACCC).

The ACCC is responsible for service delivery and regulation, including accreditation, on-boarding, technology delivery, technology operations, compliance and enforcement of the CDR. The ACCC was selected due to the high degree of trust that Australian consumers place in the agency, the agency's independence as a regulator and their objective to reduce information asymmetries and promote competition. An entity that plays both the regulator and service delivery roles can experience administrative dissonance between these functions especially where the service delivery function is incongruent to the agency's role. The governance for a regulator can differ significantly to that of an effective technology and service delivery function. To date the ACCC has succeeded in delivering banking data however, as the ecosystem grows and functionality deepens it is unlikely the current structure will be able to scale sufficiently to maintain momentum.

An independent entity, similar to the Australian Energy Regulator (AER) within ACCC, is a viable option as a stepping stone to establishing a dedicated Digital Economy agency.

Whilst a lot has been achieved for the CDR, there is significant opportunity to further evolve the CDR and recalibration of the statutory framework is required to support this.

Question one

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

The objects of Part IVD of the Act are fit-for-purpose and aligned to facilitate the economy-wide expansion of the CDR, as it was originally intended and designed. However, CDR has now evolved past this intent such that the Act's objectives should be reconsidered to further support CDR's facilitation of the digital economy.

CDR expansion opportunities

The CDR represents trust and consequently confidence in the Australian digital economy - the fundamental characteristics required to create a flourishing digital economy. The objects of the Act are focused on the original intent of the CDR, providing consumers with greater access to and control over their data.

The CDR needs to be considered from a more strategic viewpoint and look beyond the business to consumer (B2C) transaction opportunity. When considering the potential of the CDR, it is the question of what future digital economy uses require trust?

Potential future extensions of the CDR may include;

- ▶ Providing citizen and government services
- ▶ Facilitating Australian Digital Identity consent, accreditation and service delivery
- ▶ Big data to enrich and redefine B2C transactions

Considering the CDR from this broader digital economy perspective creates opportunities for expanded use cases providing greater value to consumers and citizens and efficiencies through national reusability.

CDR, Digital Identity and the digital economy

CDR and Digital Identity (DigID) share many common requirements including technology such as a register of accredited parties, service delivery, compliance and enforcement services. These services for DigID have been considered in the Digital Identity (formerly Digital Transformation Agency) Digital Identity Legislation Position Paper to be delivered by an Oversight Authority. The Australian Competition and Consumer Commission (ACCC) has successfully provided accreditation, on-boarding, compliance and enforcement services and has built and operates the register of accredited persons for the CDR. With such similar requirements, and taking a view of national reusability and removing future additional effort to interoperate, the position paper stated that "ACCC is a good candidate for the Oversight Authority because of their role in administering and regulating the Consumer Data Right scheme" - EY agrees with this statement.

Considerations for roles and responsibilities

Beyond the objects of the Act, there are aspects of the Act, particularly relating to the key roles and the agencies in which they sit, which should be re-considered to optimally align to and facilitate economy-wide expansion of the CDR. There are four key entities contributing to the CDR:

- ▶ The Treasury is responsible for designation and policy
- ▶ Data Standards Body (as part of The Treasury) is responsible for technical standards
- ▶ ACCC is responsible for accreditation, technology and service delivery and compliance and enforcement
- ▶ Office of the Australian Information Commissioner (OIAC) is responsible for privacy

As the CDR expands one of the most critical areas is the role of the implementer. ACCC is providing the bulk of the implementer role through their service delivery function however, the Treasury has lead for whole of CDR coordination including setting and monitoring cadence and roll-out of the CDR. It is unusual that a policy agency takes lead with implementing a program, for example even within the Treasury portfolio, the Treasury leads policy and implementation is the responsibility of the ATO. The unusual nature of the CDR arrangement has been discussed in the House of Representatives, "The most damning thing is that, weirdly, the Treasury is leading this, not the technical people"^(a). This arrangement should be reviewed and a formal implementer role defined and assigned to the entity that is best placed to successfully implement the CDR.

The Data Standards Body (DSB) role in setting CDR technical standards also includes register standards design, whilst one of the ACCC's roles includes the build and maintenance of the Register. Locating the DSB within a non-technical policy agency (The Treasury), away from the technology delivery team accountable for delivery and maintenance of the Register (ACCC), has created an unnecessary and inefficient separation of the two key technical entities in CDR.

(a) [House of Representatives, Hansard Transcript 30.03.2022, pages 1256-1257](#)

Question one (cont'd)

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

This has been highlighted publicly where disagreement of standards and timing of obligations between DSB and ACCC has led to rework and delays to delivery of key technology such as the CDR sandbox. Senator Hume has highlighted the importance of the sandbox as key to solving some of the challenges facing CDR, *"We want to work out a way to sandbox the CDR to ensure that the data is efficient and accurate before launching"*. Avoidable delays to technology components of CDR ultimately delay realising benefits for consumers.

In addition to the separation, the DSB is led by a statutory appointed chair that is able to unilaterally make decisions, bypassing recommendations from other CDR agencies and the community, effectively undermining the CDR structure, roles and responsibilities. This arrangement is inconsistent with other standards-setting functions both locally and globally and introduces additional program risk and may inhibit consumer benefit realisation.

As the CDR expands and functionality deepens, with the introduction of recommendations from the Future Directions report, it is critical that the technical standards-setting and the technology delivery teams are aligned. The most logical arrangement is that the technical standards-setting and technology delivery are co-located.

The ACCC is responsible for service delivery and regulation, including accreditation, on-boarding, technology delivery, technology operations, compliance and enforcement of the CDR. The ACCC was selected due to the high degree of trust that Australian consumers place in the agency, the agency's independence as a regulator and their objective to reduce information asymmetries and promote competition. An entity that plays both the regulator and service delivery roles can experience administrative dissonance between these functions, especially where the service delivery function is incongruent to the agency's role. For instance, the governance for a regulator can differ significantly to that of an effective technology and service delivery function. To date, the ACCC has succeeded in delivering banking data however, as the ecosystem grows it is unlikely the current structure will be able to scale sufficiently to maintain momentum.

Based on the points above, there is opportunity to consider adopting a more effective structure to lead implementation, technical standards-setting, and technology and service delivery. This structure will need to be independent and trusted by consumers and citizens to be successful. The possible options for consideration include;

1. Consolidation into an independent body within the ACCC, similar to the AER. This would enable rapid establishment of fit-for-purpose governance and oversight while retaining independence, consumer trust and leveraging ACCC support services.
2. Creating a new agency focused on the Digital Economy that would incorporate CDR and DigID technology and service delivery, as well as other Digital Economy initiatives. Investment and effort to establish this would drive national reusability and provide the focus on the digital economy to deliver the governments digital strategy.

These options do not need to be considered as mutually exclusive. To rapidly scale the CDR it is possible that an independent body, similar to the AER, within the ACCC, could be established to set technical standards, technology and service delivery for CDR, and DigID, while a new Digital Economy agency could be scoped and established.

Question two

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

Opportunities to optimise the existing assessment, designation, rule-making and standards-setting statutory requirements exist that would support the future implementation of the CDR and enable CDR to realise its full potential within the digital economy.

Within the digital economy there is opportunity for the CDR to be used to enable datasets beyond the originally intended consumer data to incorporate and cater to government held data (including citizen data) and more. The assessment, designation, rule-making and standards-setting statutory requirements need to be reconsidered with the future CDR potential, enabling trusted digital economy transactions, in mind.

Assessment and designation

Assessment and designation to date have been focused on future economic sectors for CDR to enable consumers to have greater access to and control over their consumer data however, assessment and designation should be considered from the perspective of future digital economy use cases requiring trust. The most effective way to enable these use cases is to designate datasets as opposed to by sector. A datasets approach to assessment and designation will enable benefits realisation of a whole of economy CDR faster than a sector-by-sector approach.

As noted in the question, government datasets, including citizen data, is a prime opportunity to deliver benefits to not only consumers but expanded to citizens. Use cases supporting this position exist today with government services such as The Australian Taxation Office's (ATO) tax return pre-fill functionality which uses API's to integrate banking data into an ATO service. Using the CDR for these type of services provides a more generic way for consumers to consent to sharing data which can replace some of the available, yet siloed solutions that are used today, further promoting the notion of national reusability.

The convenience to have data securely shared both between government agencies and between agencies and business, and the efficiencies to deliver services faster will provide significant value to Australian citizens. This value will only be realised where citizens have trust in the entities managing the CDR and other initiatives such as DigID, as noted earlier in this response, or else consent will likely not be given. It is imperative that CDR remains an opt in service where consumers and citizens see the benefit of securely sharing their data rather than being forced to.

Future assessment and designation should consider where the greatest benefit will be realised. The current published focus is delivering a new sector/dataset per year whereas deepening the functionality should be prioritised. The Inquiry into Future Directions of CDR in late 2020 identified deepening functionality through action initiation, Senator Hume commented, "*Action initiation is key to resolving the challenge of lack of uptake*" and the federal government provided additional funding in the 2022/23 budget however little progress has been made and current estimations are that action initiation may not be live until 2024/25. This calls into question whether designation is considering the best way forward for CDR or is fixated on delivering one sector per year.

Rule-making

An aspect of the rules, which presents a barrier to entry for potential data recipient (DR) participation is reciprocity. Whilst reciprocity embodies the purist view of the CDR with open consumer data, it is seen to be unpopular amongst DRs as it exposes their consumer data to the major data holders (DHs), who are often also DRs, therefore presenting greater opportunity for the majors to capture additional market share.

Standards-setting

There is opportunity to safeguard the CDR for future implementation in the way standards are set. Not only do these opportunities support future CDR implementation but they introduce efficiencies into the delivery of the CDR now. Key opportunities include:

- ▶ *Adoption of existing standards such as international standards* - promoting design efficiencies through reusability, why create something that already exists? This will help enable international compatibility without significant rework.
- ▶ *Consolidation of standards-setting and technology delivery* - technical standards and technology delivery should go hand-in-hand and would reduce rework, increase speed to market and foster efficiencies
- ▶ *Datasets approach* - this approach would increase speed to market and enable the future potential of the CDR in the digital economy by taking a digital economy agnostic approach

Question three

Does the current operation of the legislative settings enable the development of CDR-powered products and services to benefit consumers?

The current operation of the legislative settings enables data recipients to develop CDR-powered products and services to benefit consumers however, there is opportunity to improve the uptake of data recipients in order to increase CDR-powered products and services available to benefit consumers.

Whilst the CDR regulatory settings support the design, delivery and operations of the CDR program which enables participants to interact in the CDR ecosystem, the extent to which the CDR legislation directly influences the development of CDR powered products and services to benefit consumers is limited. The legislative settings should focus on rapidly and securely opening new datasets, delivering deeper functionality for CDR and removing friction that slow participants from entering the CDR ecosystem. Focusing on these areas will enable DRs to create innovative and useful products and services for consumers.

Increased data recipient participation

The introduction of the sandbox to enable participants to explore and test the CDR ecosystem and recent legislative changes to open additional accreditation pathways are welcome and will assist in bringing in new DRs, however without further proactive engagement with prospective participants, particularly DRs, uptake will be limited. To date, a lot of the public facing material and sentiment is directed towards consumer benefits messaging however, more work could be done to communicate the benefits and incentives to potential DRs. There is an opportunity to establish a more focused and coordinated program to attract prospective DRs, however this program will require dedicated resources and funding to be successful. The bulk of current participant engagement including accreditation, onboarding and participant support occurs from ACCC, therefore it seems logical that the ACCC would be best placed for this capability and provide continuity along the full participant experience. As per responses to earlier questions, a proactive program to attract DRs may create further tension with the ACCC's regulatory functions. This can be negated with a separate service and technology delivery entity within ACCC or the establishment of a new agency.

Increased consumer uptake

While CDR consumer uptake has not been formally published, it is understood that uptake is low and confirmed by Senator Hume's comments "we knew it was going to be a slow burn. *Open Banking in the UK was*

too". While legislative settings have limited direct impact over consumer uptake, upstream actions, or lack of action, impact the availability of quality datasets and the number of DRs providing products and services that would entice consumers to CDR. To support increased consumer uptake, a renewed focus on consumer education, updated portals tailored for consumers and removing friction through the opportunities identified earlier in this response should be considered.

Key related review considerations

Are businesses appropriately incentivised to develop these products?

Opportunity for DR uptake hinges on intrinsic incentives for a business, there is no tangible incentive that the CDR legislation outlines that will be provided to businesses in return for activation as a DR in the CDR ecosystem. The intrinsic incentives are the opportunities that the CDR ecosystem could unlock for a business if they were to join as a DR and how this level of access to consumer data could redefine the way their business and offering in the future. Whilst the incentive is there, an opportunity exists with regards to communicating this incentive and successfully incorporating this into the DR benefits messaging for CDR adoption.

Potential barriers to innovation and competition?

Barriers to entry for a participant are high as it can be a lengthy and expensive process due to insurance and security assurance requirements as part of accreditation. Whilst the original intent of the CDR is to open markets and stimulate competition through consumer data transparency with consumer consent, there is a risk that the CDR could be used to further expand the consumer market share of the major retailers, enabling them to further dominate the market, as they have the means and ability to join as a DR, alongside their DH obligation, and invest in CDR opportunities. With high barriers to entry it makes it challenging for smaller retailers to gain the benefits of participating in the CDR.